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6-0 Acronyms

AG	Attorney General
BLM	Bureau of Land Management
CFR	Code of Federal Regulation
CS	Control Section
DNR	Department of Natural Resources
DRES	Director, Real Estate Services
D/V	Determination of Value
EIS	Environmental Impact Statement
FA No.	Federal Aid Number
FHA	Federal Housing Administration
FHWA	Federal Highway Administration
JC	Just Compensation
J&D	Judgment and Decree
NEPA	National Environmental Policy Act
OAPU	Order Adjudicating Public Use
PFE	Project Funding Estimate
PMS	Property Management System
PS&E	Plans, Specifications and Estimates
P&U	Possession and Use Agreement
RES	Real Estate Services
RESM	Real Estate Services Manager
RCW	Revised Code of Washington
R/W	Right of Way
SEA	Statutory Evaluation Allowance
SEPA	State Environmental Policy Act
SR	State Route
USC	United States Code
USFS	United States Forest Service
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation
VFD	Volunteer Fire Department

6-1 General Requirements

6-1.1 Introduction

Section 8.26.010 of the Revised Code of Washington provides the following:

The state shall: (1) establish a uniform policy for the fair and equitable treatment of persons displaced as a result of public works programs of the state and local governments in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole; and 2) encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state and local programs, and to promote public confidence in state and local land acquisition practices. (1971 1st ex.s c240S 1.)

This chapter provides the regulations and procedures which are necessary to carry out these objectives.

6-1.2 Rules

- A. **Negotiated Purchase** — Every reasonable effort shall be made to expeditiously acquire real property by negotiation.
- B. **Just Compensation** — Prior to initiation of negotiations for real property, and/or property rights, the Washington State Department of Transportation (WSDOT) shall establish an amount which it believes to be just compensation. In no event shall such amount be less than the WSDOT's approved appraisal of the market value of such property. In determining just compensation, any decrease or increase in the market value prior to the date of valuation caused by the public improvement or by the likelihood that the property would be acquired for such improvements, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded.
- C. **Summary Statement** — Upon initiation of negotiations, WSDOT shall provide the owner of real property and/or property rights to be acquired with a written statement of, and summary of the basis for, the amount it has established as just compensation for the proposed acquisition. As a minimum, the summary statement shall include:
 - 1. The amount established as just compensation.
 - 2. A statement explaining that the offer is based either on WSDOT's review and analysis of an appraisal(s) of such property made by a qualified appraiser(s) or by an administrative procedure.
 - 3. Identification of the real property to be acquired, including the estate or interest being acquired.
 - 4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
 - 5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated.
- D. **Occupancy** — No legal occupant shall be required to surrender occupancy of real property before: (1) the agreed purchase price is paid; or (2) there is deposited with a court having jurisdiction over such property, for the benefit of parties of interest, an amount not less than WSDOT's approved appraisal of the market value of such property, or the court's award of compensation.

- E. Coercion — In no event will WSDOT in order to compel an agreement on the price to be paid for the property:
 - 1. Advance the time of condemnation; or
 - 2. Defer negotiations; or
 - 3. Defer condemnation and the deposit of funds in court for use of the owner; or
 - 4. Take any other action coercive in nature.
- F. Uneconomic Remnant — If the acquisition of only part of a property would leave its owner with an uneconomic remnant, WSDOT shall offer to acquire the uneconomic remnant.
- G. Special Conditions — No payment shall be made to a tenant-owner for any real property improvement unless:
 - 1. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to WSDOT all of the tenant-owner's right, title, and interest in the improvement; and
 - 2. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
 - 3. The payment does not result in the duplication of any compensation otherwise authorized by law.
- H. Alternative Compensation — Nothing in this section shall be construed to deprive the tenant-owner of any right to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.
- I. Incidental Expense Reimbursement — The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:
 - 1. Recording fees, transfer taxes, excise tax when applicable, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to WSDOT. However, WSDOT is not required to pay costs solely required to perfect the owner's title to the real property; and
 - 2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage or deed of trust entered into in good faith encumbering the real property; and
 - 3. The pro rata portion of any prepaid real property taxes which are allocable to the period after WSDOT obtains title to the property or effective control of it, whichever is earlier.

Whenever feasible, WSDOT shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement.
- J. Donations — Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefore, to the state. WSDOT is responsible for assuring that an appraisal of the real property is obtained unless the owner releases WSDOT from this obligation.
- K. Civil Rights — The right of way acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, religion, sex, or national origin, be denied the benefits to which the person is entitled, or be otherwise subject to discrimination.

- L. Conflict of Interest — The Acquisition Agent may not accept the assignment of a parcel:
 - 1. After having appraised or assisted in the appraisal or review of appraisals on the parcel. If the determination of value is \$10,000 or less, the appraiser (but not the reviewer) may act as the Acquisition Agent.
 - 2. If personally acquainted with or related to the property owner where such acquaintance or relationship might tend to influence or prevent acting in an unbiased and professional manner.
 - 3. In violation of the department's directive on Conflict of Interest and Employment (D 73-26).
- M. Relocation Assistance — When the acquisition of right of way requires the displacement of any family, individual, farm, business, nonprofit organization or their personal property, that party or organization may be entitled to payments, separate and distinct from the acquisition compensation, in order to alleviate the costs of moving and replacement housing. Such payments and matters pertaining to eligibility therefore are the subject of Chapter 12 of this manual.

6-2 Normal Preparation

6-2.1.1 Plan Preparation

- A. The Region Real Estate Services Manager (RESM) attends all public meetings to provide information as needed. Written information explaining the state's acquisition and relocation policies will also be available.
- B. The Region RESM serves as a member by appointment of the interdisciplinary team to provide information and expertise on such issues as:
 - 1. Route selection.
 - 2. Reconnaissance estimates.
 - 3. Wetlands, cemeteries, gas stations, etc.
 - 4. Right of Way Plan preparation.

6-2.1.2 Project Inspection and Parcel Assignment

The Region RESM ensures that:

- A. The Right of Way Plan sheets are accurate with respect to ownership details and rights to be acquired.
- B. Authority to purchase the necessary property rights has been received.
- C. The project has been physically inspected.
- D. The appropriate computer entries have been made.
- E. Any remainder whose water supply may be affected by the state's taking is identified. The procedures given in Chapter 8 are followed.
- F. Any recent or pending public improvement assessments are identified.
- G. Action is taken in accordance with Chapter 8 to identify and clear utility interests on a project-wide basis.
- H. Individual parcel files are prepared which include:

1. Title report and assessor's total area.
 2. Appraisal report if appropriate.
 3. Determination of Value (Form RES-214) or Administrative Offer Summary (Form RES-216).
 4. Salvage Appraisal Report (DOT Form 263-003) (if applicable).
 5. Appropriate Right of Way Plan sheet(s).
 6. Relocation Assistance booklet (if applicable).
 7. Acquisition **booklet**.
- I. The Special Acquisition Manager is notified of any parcels which are to be acquired through Headquarters negotiations.
 - J. Complete sets of Right of Way Plan sheets are available.

6-2.2 Acquisition Agents Actions Prior to Contact With the Owner

The Acquisition Agent:

- A. Adds to the parcel file the Diary of Right of Way Activities — Acquisition.
- B. Reviews the title report(s). Checks the description to ensure conformity with Right of Way Plans; determines the action to be taken with respect to each encumbrance; obtains any supplemental title reports which may be necessary through the Region RESM.
- C. Studies the appraisal report and the Review Appraiser's Determination of Value or Administrative Offer Summary (Form RES-216), taking special note if there are any tenant-owned improvements identified.
- D. Studies and investigates all details of the Right of Way Plans as well as the profiles, cross sections, and road approach schedules from the design report for complete familiarity and understanding.
- E. Reviews hearing transcript and EIS documents when available.
- F. Makes an on-site inspection of the proposed acquisition. Notes evidence of any recent or pending public improvements (because these may cause an assessment). Notes physical access in the before and after situations. Notes any item (e.g., improvements, utilities, etc.) which may have been missed in the title report and/or the appraisal.
- G. Coordinates with Relocation Assistance and Property Management as required. If improvements are to be rented back to grantors, follows procedures in Chapter 11.
- H. Prepares an appropriate "Offer Letter" in accordance with specific guidelines shown in Figure 6-2.2H. Each letter is individually prepared on region letterhead, error-free. **Note: If the offer is administrative, the offer letter must not say the property has been appraised.**
- I. Whenever possible, prepares the instruments and vouchers necessary to complete the transaction (see Section 6-6, and Chapters 9 and 13).
 1. Title is acquired by a recordable deed when:
 - a. The Right of Way Plan indicates a fee title acquisition.
 - b. The parcel owner will be deprived of use of the area to be acquired.
 - c. The state is to locate facilities and/or utilities in the area to be acquired.

Acquisition

2. Title is acquired by a recordable easement when:
 - a. The Right of Way Plan indicates an easement area.
 - b. The parcel owner may derive some use of the area to be acquired.
 - c. The state is to maintain the item to be constructed.
3. Title is acquired by a recordable temporary easement when:
 - a. The Right of Way Plan indicates a construction area.
 - b. The parcel owner:
 - (1) Will derive use of the area to be acquired.
 - (2) Will benefit from the item to be constructed.
 - (3) Will maintain the item to be constructed.
 - c. The state requires the area for construction purposes only and will return the area to its former use, appearance, and configuration.
4. An interest in property is acquired by special purpose instruments (e.g., permit, options, leases, agreements, consents, releases) as specified by the Region RESM.

(Name and Address of Owner)

Re: SR _____
 RW _____, C.S. _____,
 FA No. _____
 Right of Way Plan Sheet _____ of _____ Sheets
 Parcel Number _____

Dear _____:

The Washington State Department of Transportation (WSDOT) plans to proceed with the above-titled public project. As a part of the project, we need to purchase your property and/or property rights identified on the "Right of Way Plan" by the "parcel number" listed above. The bearer of this letter is the department's agent in completing this transaction.

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all the elements which contribute to the market value of your property. By law, they must disregard any general increase or decrease in value caused by the project itself. Based upon the market value estimated for your property, [enter Options 1, 2, 3, or 4 and appropriate Additional clauses A through G, as listed in the attached exhibit].

Payment for your property and/or property rights will be made available to you by certified mail approximately 45 days after you accept the department's offer, provided that there are no delays in closing the transaction. The date on which payment is made available to you is called the "payment date." On that date, the state becomes the owner of the property purchased and responsible for its control and management.

You may wish to employ professional services to evaluate the state's offer. If you do so, we suggest that you employ well-qualified evaluators so that the resulting evaluation report will be useful to you in deciding whether to accept the state's offer. The state will reimburse up to \$750 of your evaluation costs upon submission of the bills or paid receipts.

If you decide to reject the state's offer, the state, acting in the public interest, will use its right of eminent domain to acquire your property for public use. In conformity with the Washington State Constitution and laws, the Attorney General will file a condemnation suit to obtain a "Court Order of Public Use and Necessity," and a trial will be arranged to determine the just compensation to be paid for the property.

The Internal Revenue Service (IRS) requires that the state obtain your correct taxpayer identification number (TIN) or social security number (SSN) to report income paid to you as a result of this real estate transaction. You will be required to complete the attached W-9 form and provide it to the department's agent upon acceptance of the state's offer. If you want additional information, please contact an IRS office.

We have attempted by this letter to provide a concise statement of our offer and summary of your rights. We hope the information will assist you reaching a decision. Please feel free to direct any question you have to the undersigned. May we please have your early reply as to acceptance or rejection of this offer?

If you have personal property presently located on the property being acquired by WSDOT that needs to be moved, WSDOT will reimburse you for the cost of moving it through the Relocation Assistance program.

Thank you.
 Sincerely,
 (name)
 Region Administrator

By:
 Right of Way Agent
 Telephone:

Receipt of this letter is hereby
 acknowledged. I understand that this
 acknowledgment does not signify
 my acceptance or rejection of this offer.

 Signature Date

Note: Only the optional paragraphs that are applicable to the individual case are included in the offer letter

Offer Letter

Figure 6-2.2H.

Option No. 1: (Total acquisition.)

Our offer is \$_____ for (front feet, square feet, acres) of land and (house, garage, pump house and pump, etc.)

[Add clauses C, D, E, and F as required.]

Option No. 2: (Partial acquisition.)

Our offer is \$_____. This offer consists of \$_____ for (front feet, square feet, acres) of land (access rights) and (house, garage, pump house and pump, etc.) and \$_____ for all (severance or proximity) damages.

[Add clauses A, B, C, D, E, F, and G as required.]

Option No. 3: (Used for less than fee acquisition.)

Our offer for (an easement/permit, etc.) across the portion of your property needed for the project is \$_____. This offer consists of \$_____ for loss in market value (damages) to your property and \$_____ for (list any improvements acquired).

[Add clauses B, C, D, E, F, and G as required.]

Option No. 4: (Used for acquisition of access rights only.)

Our offer for the purchase of access rights is \$_____.

[Add clauses A, B, and D as required.]

Option No. 5: (Used when administrative offers made and no appraisal was completed. The paragraph stating that an appraisal was made must be eliminated from the offer letter.)

An administrative offer of \$ is being made for your property or property rights.

[Enter Options 1, 2, 3, or 4 and appropriate Additional clauses A through G, as listed in the attached exhibit.]

Note: If the AOS states that amount is per minimum payment policy, then add the following verbiage “per WSDOT’s minimum payment policy”

An administrative offer (based on market research) is used when the property rights being acquired involve compensation of less than \$10,000. If you feel an appraisal is necessary, the department will have one prepared.

Option No. 6: (Used when parcel is subject to leasehold or multiple interests.)

Our total offer is \$_____. This lump-sum offer consists of \$_____ for the real property being acquired and \$_____ for the damages to the remaining real property.

Although the state has provided a summary of the elements of its offer, state law provides for a lump-sum determination of the total amount of damages which should result to all persons, tenants, and encumbrancers who have an interest in the property being acquired (RCW 8.04.110). The department is willing to enter into separate settlements for the separate items that are being acquired or damaged when all parties have agreed to their separate settlements.

Both (property owner) and (sign/lessee owner) must take part in the final settlement of this property acquisition. Payment for your property interests will be made available to you as a lump-sum approximately 45 days after you accept the department’s offer, provided that there are no delays in closing the transaction. If the parties decide on a distribution amount owed to each of them, the department will issue separate warrants upon the request of all parties. The date on which payment is made available to you is called the “Payment Date.” On that date, the state becomes responsible for the control and management of the property and/or property rights purchased.

(Separate offers will be made to the tenants for tenant owned improvements considered to be part of the real estate and to the owner for fee owned improvements and the land. Separate settlements will not be made without all parties to the transaction being in agreement. If the parties are not in agreement, the parcel will be referred to the Attorney General’s Office for litigation and one lump sum payment will be made into the registry of the court.)

Option No. 7: Advance Acquisition, voluntary acquisitions, and acquisitions prior to Findings and Order Delete the following paragraph:

If you decide to reject the state’s offer, the state, acting in the public interest, will use its right of eminent domain to acquire your property for public use. In conformity with the Washington State constitution and laws, the Attorney General will file a condemnation suit to obtain a “Court Order of Public Use and Necessity,” and a trial will be arranged to determine the just compensation to be paid for the property.

Note: We will not or cannot condemn.

WSDOT will also pay Real Estate Excise Tax on these voluntary transactions.

Offer Letter Additional Clauses (page 1 of 2)
Figure 6-2.2H

Clause A: (If there is an uneconomic remnant, add):

It has been determined that the acquisition of the needed right of way will leave you with a remainder containing an area of _____. If you wish to keep this remainder, you may do so; however, if you prefer to sell it, the state will pay you the remaining value of \$_____ for that property. This would be in addition to the amount offered in this letter for the purchase of the needed property.

Clause B: (Used in cases involving special benefits. Clear copies of RCW Chapters 8.25.210 through 8.25.260 are attached to the owner's copy of the Offer Letter; and the following clause is added to the letter):

The department's appraiser(s) conclude(s) that the completion of this project enhances the market value of your remaining property in the amount of \$(Item 1), therefore, special benefits in the amount of \$(Item 2) have been deducted in computing the offer. To inform you of optional methods of settlement of benefit cases, we have included herewith RCW Chapters 8.25.210 through 8.25.260. The undersigned agent is not authorized to explain or discuss the options provided in the statutes. If you require interpretation, we advise that you seek counsel of your choice.

Item 1: Enter the total amount of special benefits as shown on the approved determination of value.

Item 2: Enter the amount of special benefits that have been deducted in computing the offer. This amount cannot exceed the total of the market value of the property being acquired and the amount of damages, if any, to the remainder of the property.

Clause C: (If there are salvageable improvements affected and salvage was approved in advance, add):

If you choose to keep the improvements and remove them from the site, you may acquire the right to salvage these improvements by paying the salvage value of \$_____ and by posting a performance bond of \$_____. Both of these may be paid by deducting them from the amount of the purchase price offered.

Clause D: (If owner or tenant is making no use of land/rights to be acquired, add):

The state will acquire occupancy of the property on the "payment date" as defined in this letter.

Clause E: (If the acquisition will result in the displacement of persons or personal property, add):

Owners and tenants of dwellings, businesses, farm operations, or non profit organizations being displaced cannot be required to move from the referenced property without being given a written assurance of at least 90 days prior to the date by which they will be required to vacate the property. In most cases, WSDOT will provide this assurance in the relocation letter entitled, "Notice of Relocation Eligibility, Entitlements, and 90-Day Assurance". Occupancy of the property beyond the date the state acquires possession will require that a rental agreement be signed and rent be paid. If the occupant vacates the property within 30 days after the "payment date", the state will refund all prepaid rent.

Clause F: (If there are tenants in occupancy and the owner's salvaged improvements or personalty is to be removed, add):

By execution of a rental agreement with the state, you will be permitted a reasonable length of time to salvage improvements and/or to remove personal property after the date the property is vacated by any tenants now occupying or using the property.

Clause G: (If access to a remainder is by a frontage or service road to be constructed, add):

The state's plan provides for access to your remaining property by a roadway to be constructed. This offer is based on that premise. You are hereby informed, however, that construction of said roadway may be delayed until after construction of the main highway itself. In the interim, you will be provided with temporary access directly to the main highway. This temporary access will be closed and cease to exist when said roadway is constructed and operational.

Clause H: (If acquiring residential properties, add):

RCW 64.06 provides for a disclosure statement from sellers of residential property including multi-family dwellings up to four units and condominiums unless the Purchaser elects to waive the necessity of said statement. The Washington State Department of Transportation, as Purchaser of your property, does hereby waive the necessity of your providing the disclosure statement.

Offer Letter Additional Clauses (page 2 of 2)
Figure 6-2.2H

6-2.3 Identity of Parties

6-2.3.1 General

- A. A title report may include encumbrances recorded against parties with the same or similar names as the record owners. These encumbrances (judgments, tax liens, etc.) usually do not include a property description and may not actually affect your property. Care must be exercised in determining the identity of parties concerned.
- B. A title report may also question the ability of a party in interest to give a legal conveyance. These questions normally arise from the appearance of filings (by name) for dissolution of marriage (divorce), of guardianships, commitment of persons to institutions for the care of mental illnesses, etc.
- C. It may also be appropriate for the Acquisition Agent to raise questions of personal identity and questions of legal capacity of any party in interest as a result of field investigation.

6-2.3.2 Rules

The state is responsible for determining and clarifying:

- A. The identity of parties in interest.
- B. The status (ability to give a legal conveyance) of parties in interest.

6-2.3.3 Procedures

The Acquisition Agent:

- A. Questions the parties having direct and personal knowledge of the case (e.g., parties named, attorneys, relatives, etc.) on items as the following, as appropriate:
 - 1. Full names.
 - 2. Age of party.
 - 3. Name of spouse.
 - 4. Current and prior addresses.
 - 5. Occupation.
 - 6. Employer.
- B. Includes a summary of the information and states conclusions in the encumbrance report (see Chapter 8) clarifying the question of identity or ability to convey.
- C. If the investigation produces insufficient basis for a conclusion and/or if the party in interest does not acknowledge being the party against whom an encumbrance appears, requests completion of an identity questionnaire and affidavit (obtained from the title company issuing the title report) by the party in interest.
- D. Any questions which cannot be resolved by the region may be referred to the Headquarters Assistant Director, Title and Condemnation Program.

6-3 Acquisition Agent's Contact With the Owner

6-3.1 Suggested Presentation Technique

The Acquisition Agent:

- A. Contacts all parties having an ownership in property rights required (land, encumbrances, and improvements). Encourages a setting for meetings that will allow for proper display of maps and affords enough privacy to avoid unnecessary distractions.
- B. Verifies that the person(s) to whom the offer is to be made is the parcel owner, contract buyer, or an agent for same who is authorized to convey the subject parcel.
- C. Explains purpose of the project, what property rights will be required, and why.
- D. Presents the state's offer orally and in writing. The state's offer is normally presented during the first or second personal contact with the owner(s) or their representative. Reviews the offer letter with the owner to ensure complete understanding. At the time of delivery of the state's offer letter, the acquisition agent should also provide the property owner(s) with a W-9 form to complete in accordance with procedures set forth in Chapter 10 of the Right of Way Manual.
- E. Reviews the Right of Way Plans and title report(s) with owner for accuracy and completeness. In the case of a partial acquisition, points out the impact of the project on the remaining property such as water rights, drainage, access restrictions, road approach details, etc.
- F. If there are no persons or personal property displaced by the state's acquisition, the agent so states in the diary.
- G. If there are persons or personal property to be displaced, follows instructions in Section 6-4.2.
- H. Obtains any information from the owner regarding tenants on the parcel to be acquired, with particular attention to:
 1. Identity of tenants and how to contact.
 2. Length of occupancy.
 3. Amount of rent paid.
 4. Confirms identity of any tenant-owned personalty or improvements, as shown in the appraisal and/or determination of value, or Administrative Offer Summary.
- I. Obtains copies of unrecorded leases from owner or tenant.

6-3.2 Post-Meeting Responsibilities

6-3.2.1 Diary of Right of Way Activities — Acquisition (Form RES-301)

The Acquisition Agent makes detailed entries in the Diary of Right of Way Activities — Acquisition covering every contact, meeting, etc., involving the assigned parcels. These entries are made as soon as possible after each contact to assure accuracy. Upon completion of entries, the agent is to sign and date the diary. Diary entries are limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceedings. Diary entries include, but are not limited to, the following:

Acquisition

- A. The date of the parcel assignment.
- B. The date, time, telephone number, and full name (e.g., Mr. John F. Jones, not Mr. Jones) of any party of interest who is contacted by telephone.
- C. The date, time, address, and place of every meeting with any party in interest. This includes the actual location of the meeting, e.g., the dining room of the owner's residence, Attorney John T. Smith's office in the Block Building, etc.
- D. The full names of all adult participants in a meeting, and their relationship to the owner. If children are participants, note their approximate ages.
- E. The amount in dollars of the state's offer and the fact that the offer was made both orally and in writing. The same information is given for any revised offers by the state.
- F. A summary of the events of the meeting, including:
 - 1. The owner's reaction to the state's offer.
 - 2. Details of any counter offers, etc.
 - 3. Owner's questions and Acquisition Agent's responses.
 - 4. Any problems noted.
 - 5. The explanation of the Statutory Evaluation Allowance.
 - 6. The explanation of the Relocation Assistance Program.
 - 7. If improvements are being acquired, an explanation of any salvage allowed.
- G. Either an indication of who signed the receipts for the offer letter and for the Relocation booklet and the Acquisition booklet, or a statement that the letter and booklet were delivered, but that the owner refused to sign the receipts.
- H. The details of any negotiated/administrative settlement that is reached, or the date of filing the Negotiators Report (Form RES-320) (see Section 6-10) and that all parties in interest have been notified of this action.

6-3.2.2 Relocation Assistance Eligibility

The Acquisition Agent sends the original Relocation Eligibility Report to the Relocation Section as soon as possible following the initiation of negotiations. This report is only necessary where there will be relocation assistance provided.

6-3.2.3 Continued Negotiation

The Acquisition Agent:

- A. If there is a revision to the Right of Way Plan, or if there is a reappraisal, either of which result in a new or revised Determination of Value (Form RES-214), makes an appointment with the owners to present the state's revised offer. Uses the same general presentation as in the original offer except that the Agent presents the state's revised offer orally and in writing using the revised offer letter (see Figure 6-3.2.3A) or revised administrative offer letter (see Figure 6-3.2.3B), in which the occupancy date is restated as 90 days from the date of the revised letter. If the acquisition involves an owner-occupied dwelling, a revised Notice of Eligibility, Entitlements, and 90 Day Assurance letter must be presented.

(Use Region Letterhead)

(Name and Address of Owner)

Re: SR _____
 RW _____, C.S. _____,
 FA No. _____
 Right of Way Plan Sheet _____ of _____ Sheets
 Parcel Number _____

Dear _____:

In our letter dated _____, the State of Washington, Department of Transportation, offered to purchase property and/or property rights owned by you and identified as parcel number _____.

The appraisal which resulted in our offer has now been revised because _____. This revision makes it necessary to withdraw our earlier offer and make a new offer.

You may wish to employ professional services to evaluate the state's new offer. However, the \$750 evaluation allowance mentioned in our original offer letter is a one-time allowance only.

(See Offer Letter sample for appropriate option(s), Figure 6-2.2H.)

Your rights, as summarized in our earlier offer letter, remain unchanged. May we please have your early reply as to acceptance or rejection of this offer? Thank you.

Sincerely,

(name)
 Region Administrator

By:
 Right of Way Agent
 Telephone:

Receipt of this letter is hereby
 acknowledged. I understand that this
 acknowledgment does not signify
 my acceptance or rejection of this offer.

 Signature Date

Revised Offer Letter
Figure 6-3.2.3A

(Use Region Letterhead)

(Name and Address of Owner)

Re: SR _____
RW _____, C.S. _____,
FA No. _____
Right of Way Plan Sheet _____ of _____ Sheets
Parcel Number _____

Dear _____:

In our letter dated _____, the State of Washington, Department of Transportation, offered to purchase property and/or property rights owned by you and identified as parcel number _____.

Changes have occurred which make it necessary to withdraw our earlier offer and make a new offer.

You may wish to employ professional services to evaluate the state's new offer. However, the \$750 evaluation allowance mentioned in our original offer letter is a one-time allowance only.

(See Offer Letter sample for appropriate option(s), Figure 6-2.2H.)

Your rights, as summarized in our earlier offer letter, remain unchanged. May we please have your early reply as to acceptance or rejection of this offer? Thank you.

Sincerely,

(name)
Region Administrator

By:
Right of Way Agent
Telephone:

Receipt of this letter is hereby
acknowledged. I understand that this
acknowledgment does not signify
my acceptance or rejection of this offer.

Signature Date

Revised Administrative Offer Letter
Figure 6-3.2.3B

- B. Submits any appraisal provided by the owner to the review appraiser, in accordance with instructions in Chapter 5.
- C. Continues the negotiations until either:
 - 1. A satisfactory settlement is reached. In this case, the Acquisition Agent prepares the Right of Way Acquisition Transmittal (DOT Form 262-048) and its accompanying data package as specified in Section 6-8.
 - 2. A settlement cannot be reached. In this case, the Acquisition Agent prepares the Negotiator's Report (Form RES-320) and its accompanying data package as specified in Section 6-10 or 6-11.

6-3.3 Owner Represented by Others

6-3.3.1 General

- A. The property owner (or any other party of interest) may choose to be represented by another party. Certain individuals (e.g., minors, incompetents, etc.) are required by law to have another party represent them.
- B. An Attorney at Law may act as the owner's representative, but may not contract or convey in the place or name of the owner.

6-3.3.2 Rules

- A. At the owner's request, the state conducts acquisition activities with the interested party's Attorney at Law.
- B. The state accepts conveyances from the following duly authorized fiduciaries:
 - 1. Attorney in Fact:
 - a. Individual — As provided in a recorded Power of Attorney that has not been revoked or superseded, if the principal is alive and mentally sound.
 - 2. When confirmed or appointed by and acting under the order of the court:
 - a. Administrator or executor of the estate of a decedent.
 - b. Guardian of a minor, incompetent, or insane person.
 - c. Receiver of a corporation in receivership.
 - d. Referee or trustee of a person or business in bankruptcy.
- C. Legal fees and owner's expenses required to pass good title to the state are payable as "incidental selling expenses" in accordance with Section 6-4.

6-3.3.3 Procedures

6-3.3.3.1 Attorney at Law

- A. If the property owner (or any other interested party) is represented by an attorney, the Acquisition Agent deals only with that attorney. The Acquisition Agent requests the property owner to furnish written confirmation of the scope and fact of such representation. When furnished, such confirmation is made part of the parcel file.
- B. If the property owner subsequently decides to deal directly with WSDOT, the Acquisition Agent requests that the owner furnish a letter of notification. When received, such letter is placed in the parcel file.

6-3.3.3.2 Attorney in Fact

- A. When dealing with the officers of a corporation, the Acquisition Agent proceeds as specified in Section 6-5.
- B. When dealing with an owner's Attorney in Fact (who may also be an Attorney at Law), the Acquisition Agent may accept conveyance from either the individual (the principal) or from the Attorney in Fact, provided (in the latter case) that the Acquisition Agent:
 - 1. Reviews the recorded Power of Attorney and determines that the Attorney in Fact is authorized to convey the subject property.
 - 2. Determines that the recorded Power of Attorney has not been revoked or superseded.
 - 3. Uses the proper form of acknowledgment, etc. (see Section 9-15.1), thereby obtaining the Attorney in Fact's sworn statement that the principal is alive and of sound mind.
 - 4. Includes a copy of the Power of Attorney, showing recording data in the transaction package when forwarded for processing.

6-3.3.3.3 All Other Fiduciaries

The Acquisition Agent:

- A. May discover from either the title report or from field work that a fiduciary (administrator, executor, guardian, trustee, etc.) exists or is needed.
 - 1. The title report will note the existence of a court-appointed fiduciary if the court action was in (or was recorded in) the county where the subject property is located.
 - 2. Again, if the action took place in (or was recorded in) the appropriate county, the title report may note the existence of a problem, e.g., that the interested party (or a party of a similar name) was committed as insane (see Section 6-2 for procedures on "Identity of Parties").
- B. If a fiduciary is needed, or if the existing court-appointed fiduciary does not have the power to convey, suggests that the party in interest obtain the services of an Attorney at Law.
- C. Obtains a supplemental title report that identifies the duly-authorized fiduciary.
- D. Deals with the fiduciary using the procedures of Section 6-3 and provided that:
 - 1. Proper court proceedings are followed:
 - a. In the case of a nonintervention will, the order of solvency must have been entered before the executor can legally convey to the state.
 - b. In all other cases, the following court procedure is required:
 - (1) Order of sale.
 - (2) Posting and publication of notice of sale.
 - (3) Independent Appraisal of the Property — The appraisal must be not more than one year old, and the sale must be for at least 90 percent of the independently appraised value.

Note: The foregoing is for a total take. In the case of a partial take, if the department's appraisal and the court appraisal are close (10 percent) on the before value, the court could be expected to accept the department's evaluation of the take. Otherwise, the court's appraisal must be a complete

before and after type of appraisal, and the department's offer must be not less than 90 percent of the court's appraisal of the value of the take. The court's appraisal may be submitted as an owner's appraisal.

- (4) Notice to the court on return of sale.
 - (5) Order Confirming Sale — This order legalizes the fiduciary's conveyance to the state; therefore, a copy is included with the transaction package.
2. The fiduciary makes a commitment to a reasonable attorney's fee (if any) to be charged to the state.
 3. The proper forms of acknowledgment, etc., are used on the instrument(s) (see Chapter 9).

6-3.4 Out-of-State Owner

If an owner resides out-of-state or if so instructed by the Region RESM, negotiations will be accomplished by mail. In these instances, the Acquisition Agent:

- A. Adapts the procedures in Section 6-2 for initial preparation.
- B. Sends to the owner by certified mail, with return receipt requested:
 1. The original and one copy of the offer letter (see Figure 6-2.2H), with the copy marked requesting signature and return.
 2. A copy of the Right of Way Plan marked to definitely show the area to be acquired and any remainder(s).
 3. "Transportation Property Needs and You" booklet.
 4. Relocation Assistance Program booklet, if appropriate.
 5. Such additional relocation assistance material as may be deemed necessary upon consultation with the Region Relocation Assistance Supervisor.
 6. Original and one copy of all instruments necessary for the transaction.
 7. Real Property Voucher(s) (DOT Form 262-039).
 8. Special instruction on what to sign, where to sign, how to sign requirements for acknowledgments, and instructions for return mailing.
 9. Self-addressed, stamped envelope.
- C. Upon return of the certified mail receipt, telephones the owners to discuss the state's offer and to obtain the owner's reaction.
- D. Upon receipt of the executed instruments, signed voucher(s), and receipted offer, sends a "thank you" letter and completes the Right of Way Acquisition Transmittal (DOT Form 262-048) as specified in Section 6-8.
- E. If the owners do not respond within two weeks, sends by certified mail (return receipt requested) a "follow-up" letter or contacts by telephone to follow-up.
- F. If the out-of-state owners do not respond within two weeks to the "follow-up" letter, sends by certified mail (return receipt requested) an urgent letter. If the owners are in-state, makes personal contact.
- G. If the owners reject the state's offer or do not respond within two weeks to the "urgent" letter, sends by certified mail (return receipt requested) a "condemnation notice" similar to that in Figure 6-3.4G, and files the Negotiator's Report (Form RES-320) (see Sections 6-10 and 6-11).

6-3.4.1 First Contact (Offer) by Mail

The Region RESM may designate projects in which the first contact (offer) with property owners may be accomplished by mail. In these instances, the acquisition agent:

- A. Adapts the procedures in Section 6-2 for initial preparation.
- B. Sends to the owner by certified mail, with return receipt requested:
 - 1. The original and one copy of the offer letter (see Figure 6-2.2H), with the copy marked requesting signature and return.
 - 2. A copy of the Right of Way Plan marked to definitely show the area to be acquired and any remainder(s).
 - 3. “Transportation Property Needs and You” booklet.
 - 4. Relocation Assistance Program booklet, if appropriate.
 - 5. Such additional relocation assistance material as may be deemed necessary upon consultation with the Region Relocation Assistance Supervisor.
 - 6. A cover letter with brief project description and an explanation of the acquisition procedure and the agent's business card.
 - 7. Self-addressed, stamped envelope.
- C. After a reasonable time for review by the owners, telephones to discuss the state’s offer, and sets up a meeting.
- D. Continues with normal negotiation process.

(Use Region Letterhead)

(Name and Address of Owner)

Re: SR _____
 RW _____, C.S. _____,
 FA No. _____
 Right of Way Plan Sheet _____ of _____ Sheets
 Parcel Number _____

Dear _____:

In the process of acquiring property, honest differences of opinion as to Market Value occasionally arise. When this happens, the material is submitted to the courts for a fair and impartial determination. This is done to assure that both your rights as an individual property owner and the rights of all the taxpayers of the state are equally protected.

As we have apparently reached the point where an honest difference of opinion does exist, we are turning this matter over to the Attorney General so that the question of the Market Value of your property may be determined impartially by the court.

We regret that we have been unable to reach a settlement with you. However, since there will be several days of preparation time required prior to submitting your parcel to the Attorney General, we again offer you the amount of \$ _____* as was previously offered you by our letter of _____. Should you reconsider and decide to accept this offer prior to its automatic withdrawal by referral of this parcel to the Attorney General, please communicate directly with our Assistant Director, Real Estate Services, at the following address:

Washington State Department of Transportation
 Assistant Director
 Real Estate Services Office
 Transportation Building
 Olympia, WA 98504

Sincerely,

(name)
 Region Administrator

By:
 Acquisition Agent
 Telephone:

**Insert dollar amount and date of latest offer letter.*

Condemnation Notice
Figure 6-3.4G

6-4 Inducements

There are a number of inducements available which may assist in reaching a settlement with the property owners.

6-4.1 *Expenses Incidental to Selling to the State*

6-4.1.1 Statutory Evaluation Allowance

By statute (RCW 8.25.020), parties having interests in a parcel may be reimbursed up to \$750 for “expenditures actually and reasonably incurred” in evaluating the state’s offer. The Acquisition Agent uses the following guidelines and procedures in making the claim for the statutory evaluation allowance:

- A. In making the offer to the owners, the Acquisition Agent explains the statutory evaluation allowance. The Agent suggests to the owners that, if they choose to have an evaluation made, it should be made by knowledgeable personnel. Do not suggest that they have their own appraisal made. An evaluation of the state’s offer may take many forms — an appraisal is only one of those forms.
- B. Only one allowance may be paid per transaction. This rule applies in the following situations as well as to the standard single parcel-single owner transaction:
 - 1. More than one offer is made on a parcel.
 - 2. Two or more tracts which have separate parcel numbers but are combined for appraisal and acquisition purposes due to common ownership.
 - 3. More than one party in interest elects to have an evaluation made.
- C. The Acquisition Agent reviews the documentation accompanying the claim for payment and prepares a Real Property Voucher not to exceed \$750 for those items which qualify. The documentation for the claim must accompany the signed voucher.
- D. The statutory evaluation allowance is normally paid at the time of final settlement unless unusual delays in settlement are experienced due to department activities (e.g., lack of funding, etc.).

6-4.1.2 Allowance for Other Expenses

Certain “incidental expenses” incurred in transferring property to the state are payable by the department.

- A. Payable Expenses
 - 1. Processing Expenses — The mortgagee’s reasonable fees for processing documents and analyzing the account, recording fees, owner’s legal fees, etc., required to pass good title.
 - 2. Prepayment Penalties — Loan prepayment penalties charged by a mortgagee.
Note: There are no prepayment penalties in the case of FHA insured loans.
 - 3. Reconveyance Fee — A Trustee is entitled to a fee for execution of a reconveyance (see Chapter 8).
 - 4. Other charges incidental to the conveyance of clear title by the owner such as attorney’s fees in connection with the appointment of a guardian, administrator, or executor.

B. Nonpayable Expenses

1. Prepayment penalties when they are incurred by the voluntary act of the grantor (i.e., when the grantor elects to prepay all or part of a loan).
2. Any other expense incurred solely for the convenience of the grantor (e.g., general attorney's fees related to advice rather than to perfecting title).

C. Procedures

The Acquisition Agent:

1. Obtains a bill or letter from the charging agency, person, or company for any fee and/or prepayment penalties.
2. Questions the lender and verifies the necessity for a processing charge or prepayment penalty. Telephones the Assistant Director, Title and Condemnation Program, for approval of any processing charges in excess of \$500. Approvals received are noted by the Acquisition Agent in the parcel's Diary of Right of Way Activities (Form RES-301).
3. Includes the payable expenses ("A" above) in the "For All Other Items" section of the Real Property Voucher (DOT Form 262-039). If the charging agency, person, or company is joining on the voucher, these expenses may be shown on the principal Real Property Voucher. Otherwise, they may be separately vouchered. The Trustee's reconveyance fee is separately vouchered at the time of delivery of the reconveyance.

Note: Prepaid Taxes — Although not truly an expense incidental to selling to the state, prepaid taxes allocable to any period after the state's acquisition may be claimed from and refunded by the County Treasurer (see Chapter 8).

6-4.2 Relocation Assistance Program

If our acquisition requires the moving of persons or personal property from the parcel, the Acquisition Agent completes a Relocation Eligibility Report (DOT Form 264-003). Upon obtaining proper signatures on the Relocation Eligibility Report, immediately forwards the original to the Assistant Director, Relocation Assistance.

If requested, the Acquisition Agent can Deliver a Relocation Assistance Program booklet and a General Notice of Relocation Rights (see Chapter 13 for Example) to the property owner.

The Acquisition Agent should only try answer relocation questions posed by property owners based on their knowledge and experience of the relocation assistance program. If the agent is unfamiliar with relocation, it is a better idea to offer to have a Relocation Agent contact them.

If a decision is made by the department to withdraw an offer to purchase from a property owner, and relocation is involved, the acquisition should forward a copy of the letter withdrawing the offer to the relocation department (see Chapter 12-3 of the Right of Way Manual for relocation procedures).

More complete information and instruction will be found in Chapter 12 of this manual.

6-4.3 Trades and Exchanges

6-4.3.3 General

Sometimes it is possible to arrange a settlement by trading or exchanging unneeded lands for needed lands. The lands traded may be either full or partial compensation for the lands acquired.

6-4.3.2 Rules

- A. There are three sources of land available for trades or exchanges:
 - 1. Land shown on the approved right of way plans as “excess right of way,” provided such land has been entered into the Real Property Inventory in the computer system (see Chapter 11) and has been declared surplus.

Note: It may be necessary to delay the actual transfer of this type of land until after the opening of the new facility.
 - 2. Any state-owned, department-controlled land in the vicinity of the project which is shown on the Real Property Inventory as “surplus” (see Chapter 11).
 - 3. Any “remainder” (see Section 6-4.6) acquired on a specific project may be used as trading stock on that same project, provided that:
 - a. The “remainder” is entered into the Real Property Inventory (see Chapter 11).
 - b. The state has acquired a valid title to the “remainder.”
 - c. The property has been declared surplus in Headquarters and a value for the property has been established by the Property Management Section.
- B. In addition to the formal instruments, documents, etc., the acquisition transmittal includes an Exchange Agreement (Form RES-322) completed as instructed in Chapter 9 with particular attention to the inclusion of the inventory control number.
- C. In all trades or exchanges involving the payment of money by the state, a Real Property Voucher (DOT Form 262-039) is prepared as described in Chapter 10.
- D. Full credit for the value of traded or exchanged surplus lands, as determined by a current Determination of Value (DV) (Form RES-214), must be realized against the costs of acquisition of the needed lands, or the difference justified through administrative settlement procedures as set forth in Section 6-9.

6-4.3.3 Procedures

- A. When the approved Right of Way Plans are available, the Region RESM:
 - 1. Adds all “excess right of way” and “remainders” to the Real Property Inventory.
 - 2. Initiates procedures to have all “excess right of way” and available “excess” lands in the vicinity of the project evaluated and declared “surplus” (see Chapter 11).
 - 3. Notifies the Acquisition Supervisor of all “surplus” land and “remainders” that are available for trades or exchanges.
- B. The Acquisition Agent:
 - 1. Confers with the Acquisition Supervisor as to which surplus land and remainders are available as inducements for a particular parcel. Obtains copy of Surplus Property Report showing disposal approval.
 - 2. Conducts negotiations in the normal manner but is prepared to offer a trade or exchange of surplus land at full value as shown by the current Surplus Property Report approved in Headquarters.
 - 3. Prepares the Real Property Voucher as described in Chapter 10 when the trade/exchange represents only partial consideration.

4. Obtains the grantor's execution of the Exchange Agreement.
5. Prepares the Right of Way Acquisition Transmittal (see Section 6-8) with care to include the Exchange Agreement as specified in this section, and the Surplus Property Report.
6. If less than full DV credit was obtained in the trade or exchange, complies with Section 6-9 and includes approved administrative settlement documents with the transmitted acquisition package.

6-4.4 Construction Items

- A. WSDOT may mitigate damages to a “remainder” by the inclusion of special construction items in the construction contract. An item may be part or all of the consideration to be paid for a given parcel, but its cost may not exceed the estimated reduction in damages to the “remainder” of that parcel. Some types of construction items may affect more than one parcel, in which case the cost of the item may not exceed the sum of the reductions in damages to the remainders of the parcels so affected. The cost of these construction items is eligible for federal participation when FHWA is participating in the costs of right of way acquisition.
- B. All construction items require the submission of a “Memo: Construction Item” (Figure 6-4.4B) approved by the Project Engineer. When necessary to enter upon lands not acquired to perform the obligation, a further clause granting a right of entry to the state for that purpose is also required. The “Memo: Construction Item” quotes verbatim the clause from the deed describing the construction item. The right of entry clause does not appear in the “Memo: Construction Item.” For typical clauses see Chapter 9. The memo is prepared in sufficient copies to permit enclosure of the original and two copies in the transaction package.

(Use Memorandum Format)

TO: Region Administrator

FROM: Region Real Estate Services Manager/Acquisition Agent

SUBJECT: Construction Item
SR _____
RW _____, C.S. _____,
FA No. _____
Right of Way Plan Sheet _____ of _____ Sheets
Parcel Number _____

In the transaction with _____, Parcel No. _____, on the above-referenced project, the following special consideration appears in the (deed/instrument):

(**Note:** The above clause is written as shown even though the instrument or deed has not yet been finalized.)

(Here is quoted verbatim the clause from the deed/instrument describing the construction item.)

This item is required for the following reason(s):

(State why the item has been offered to the grantor. Simple items are given simple explanations; e.g., "Road approach in accordance with *Right of Way Plan Road Approach Schedule*." A revision of the *Access Plan* requires significant explanation of reasons.)

Recommended:

Initials _____ Date _____

Accepted and Approved:

Date _____

State of Washington
Department of Transportation
Region Administrator

Memo: Construction Item
Figure 6-4.4B

6-4.4.1 Construction Items Already Included in the Right of Way Plan

- A. Input by Real Estate Services personnel as a result of project inspection during the development stage (see Chapter 1) will often lead to the appearance of construction items on the approved right of way plans (e.g., a road approach shown on the Right of Way Plan or Road Approach Schedule). It may be assumed that the economics of such construction items have been considered and approved, and that the appraiser(s) has based valuation of the “remainder”(s) on the premise that such construction items will be built.
- B. Procedures
 - 1. The Acquisition Agent:
 - a. May indicate to the owner as inducement for the acceptance of the state’s offer that such construction items are provided for in the plan and will be constructed.
 - b. If the owner concurs in the proposed construction, prepares the “Memo: Construction Item,” if appropriate (Figure 6-4.4), quoting verbatim the instrument clause describing the special construction item, but not including the right of entry clause, if any. (The “Memo: Construction Item” is required even though the construction item appears on the Right of Way Plan.) Also see Section 6-4.4.4 Road Approaches.
 - c. Hand carries the memo to the Project Engineer for approval (initials and date).
 - d. Submits the memo approved by the Project Engineer to the Region RESM.
 - 2. The Region RESM secures the approval of the Region Administrator on the memo and returns same to the Acquisition Agent.
 - 3. The Acquisition Agent:
 - a. Proceeds with the negotiations, but delays securing signatures until advised of the approval of the Region Administrator.
 - b. Includes the original and two copies of the “Memo: Construction Item” in the transaction package.

6-4.4.2 Special Construction Items

- A. Construction items not appearing on the approved Right of Way Plan may be suggested by the Appraiser, the Acquisition Agent, and/or the owner as damage mitigating, beneficial, or desirable. Regardless of the source, the economic as well as physical feasibility of any construction item must be first determined.
- B. A thorough examination of the geography and topography of the parcel is required to determine physical feasibility. This should be made by the Project Engineer/Access Management Personnel in company with the Appraiser/Acquisition Agent and land owner, as appropriate.
- C. Assuming a finding of physical feasibility and initial approval by the Project Engineer/Access Management Personnel, the matter of economic feasibility becomes an appraisal problem. The matter will be referred back to the Appraiser through the Region RESM for appraisal revision. If the proposed construction item appears economically feasible, i.e., the cost of construction is less than the amount of damages being offset by the construction, the Acquisition Agent drafts the “Memo: Construction Item” and any other necessary documentation and seeks the Region Administrator approval as in Section 6-4.4.1 above. If the cost of construction exceeds the potential reduction in damages, the matter still may be considered for approval as an administrative settlement under Section 6-9.

- D. Other procedural steps follow as in Section 6-4.4.1 above, unless the proposed construction item requires a change in the Access Plan. In such case, see Section 6-4.4.3, below.

6-4.4.3 Construction Items Requiring Revisions to the Access Plans

The Acquisition Agent may discover that a proposed construction item requires a change in the Access Plan in order to be feasible. Such changes require the approvals of the Region Administrator, State Design Engineer, State Access and Hearings Engineer, and the FHWA (on federal aid projects only). The Acquisition Agent processes construction items requiring revisions to Access Plans as described in Section 6-4.4.1 and 6-4.4.2 with the following exceptions:

- A. Requests are made only in rare instances and where the importance of the change is thoroughly explained in the body of the memo (Figure 6-4.4B).
- B. In the memo (Figure 6-4.4B), the words “Subject to approval by the Design Engineer” precede the text explaining the construction item.
- C. A copy of the memo is provided to the Region Administrator for his use in obtaining (through the Design Engineer) the necessary approvals.
- D. If appropriate, the region will seek advice from the State Access and Design Engineer.

6-4.4.4 Road Approaches

Road approaches on non-limited access highways are governed by RCW 47.50. Specific formulas for establishing road approaches have been determined.

- A. All new or altered road approaches must be documented by permit. All changes to existing access points must be approved by the Region Administrator.
- B. Construction memos may be prepared but are not required for Headquarters processing.

6-4.5 Salvage of Improvements

- A. If improvements are being acquired as a part of the state’s acquisition, the Acquisition Agent, prior to contacting the owners:
 - 1. Prepares a Fixtures and Improvements Agreement (Form RES-335).
 - 2. If the region has determined that project scheduling and other factors will allow for salvage of improvements.
 - a. Obtain written approval from the project Engineer and the Region Real Estate Services Manager For all tenant occupied improvements to be salvaged.
 - b. Obtains a Salvage Appraisal Report (DOT Form 263-003) from Region Property Management Section.
 - c. Determines from the Region Property Management Section the amount required as a Performance Bond. This amount shall be sufficient to cover the costs to perform the necessary cleanup if the owner does not perform as promised.
- B. If the owners desires to salvage any or all improvements and it will not adversely impact construction, the Acquisition Agent may offer the same at the amount of the salvage value given on the Salvage Appraisal Report, plus the required Performance Bond. See Chapter 10 for preparation of the Real Property Voucher(s).
- C. See Chapter 11 for more complete information and instructions.

6-4.6 Remainders

The following sections cover acquisition involving two categories of remainders: “uneconomic remnants” and “excess acquisition.”

6-4.6.1 Uneconomic Remnants

- A. If the Determination of Value (DV) includes a statement by the reviewer that a remainder is an uneconomic remnant, the department then offers to purchase such remnant at its damaged value by adding “Clause A” to the offer letter (see Figure 6-2.2H). Although the department is required to offer to purchase uneconomic remnants, the owner is not required to sell them. If the remnant shows evidence of contamination any offer to buy should be contingent on the property being acquired in a clean condition.
- B. If the owner rejects the state’s purchase offer and the Acquisition Agent files the Negotiator’s Report as specified in Sections 6-10 or 6-11, the uneconomic remnant is normally not included in the condemnation action except by agreement between the assistant attorney general and the property owner.

6-4.6.2 Excess Acquisition

6-4.6.2.1 Rules

- A. An excess acquisition is the acquisition of a remainder or remnant which has not been identified in the DV as being “uneconomic.”
- B. The department tries to avoid acquiring excess property, but may do so when the excess is to be used for “trading stock” on the same project, or for a pit or borrow site not yet mapped, or when appraisal considerations dictate that such excess acquisition is in the best public interest.
- C. If the state has no interest in acquiring a remainder for the purposes set forth in B, above, and the owner is adamant in his refusal to keep the remainder, the Acquisition Agent may make an excess acquisition by following the appropriate procedures:

6-4.6.2.2 Procedures

- A. If the “after value” of the remainder, as shown on the DV, does not exceed \$10,000, the Acquisition Agent prepares a memo (see Figure 6-4.6.2.2A) requesting the approval of the Region RESM. Upon receipt of the approved memo, the Acquisition Agent proceeds with the transaction in the normal manner.
- B. If the “after value” of the remainder, as shown on the DV, exceeds \$10,000, the Acquisition Agent also includes a signature line for the approval of the Regional Administrator.
- C. The Acquisition Agent includes any memos authorizing the excess acquisition with the Right of Way Acquisition Transmittal.
- D. If the owner rejects the state’s offer and the Acquisition Agent files the Negotiator’s Report (Form RES-320) as described in Sections 6-10 or 6-11, the Negotiator’s Report specifies only the required right of way.

6-4.7 Rent Free Occupancy

Rent free occupancy of improved properties may be offered as an inducement to settlement **only with prior written approval from the Director, Real Estate Services.**

6-4.8 Protective Rent

6-4.8.1 General

If a tenant vacates property before the department acquires possession, then it may be appropriate for the department to pay protective rent to prevent the property from being rented to another tenant, resulting in another displacement or in a property owner claiming loss of rent.

6-4.8.2 Rules

- A. The payment of protective rent is to be utilized at the discretion of the Region Real Estate Services Manager (RESM) based on the following criteria:
 - 1. Terms and rental rate for the current leasehold interest held by the displaced person.
 - 2. Lead-time for business and tenants to find and secure replacement sites.
 - 3. Availability of replacement sites suitable to the displaced person.
 - 4. Potential of the owner to re-rent the subject site.
 - 5. Facilitate negotiations and goodwill with the property owner.
 - 6. The acquisition schedule (ad date).

6-4.8.3 Procedures

- A. The RESM must analyze the cost effectiveness of entering into protective rent. Consideration should be given to time and cost of rent versus the payment to the displaced person(s).

For example, if the rent is \$100.00 per month on a 10' by 10' storage unit and the proposed protective rent period is 6 months, then it would not be cost effective to enter into protective rent because the personal property only benefit is \$300.00 (for 10' by 10' unit).
- B. The RESM concludes that the protective rent is justified or not justified and instructs the Region Acquisition Supervisor and Region Relocation Supervisor.
- C. If protective rent is justified, then the following procedures apply:
 - 1. The Acquisition Agent and the Relocation Agent coordinate to establish timelines regarding the vacation of the premises by the displaced person(s) and the date to commence protective rent.
 - 2. The Acquisition Agent request that the owner (landlord) provide WSDOT with a lease/rental agreement.
 - 3. The Region will submit the lease/rental agreement to the Assistant Director, Title and Condemnation program for review and approval.
 - 4. If the owner (landlord) does not provide a lease/rental agreement, then the appropriate WSDOT acquisition lease for residential or commercial site will be utilized.
 - 5. The Region will establish a rental rate and provide documentation justifying said rate. The rental rate for the property should reflect an appropriate reduction in services no longer required by the owner.
 - 6. The following are suggested methods of payment available:

Agreement – The Region executes three original instruments and establishes a OP Agreement following procedures outlined in Section 3.16 of the Agreements Manual (M22-99).

Real Property Vouchers – The Region executes Real Property Vouchers to make monthly, quarterly, or yearly payments based on the terms of the lease.

Administrative Settlement – The Region and the property owner reach an agreement on the amount of protective rent to be paid. This amount is justified as per Chapter 6-9 and is paid in the primary real property voucher upon final settlement with the property owner.

Note: Protective rent should continue until the department has obtained possession of the property (e.g. by Deed or Possession and Use).

7. Upon vacation of the premises by the current tenant, the Acquisition Agent will obtain verification that the existing lease has been terminated and that all deposits have been returned to the tenant.
8. The region will submit the lease/rental agreement to the Director, Real Estate Services following the procedure set forth in Chapter 6-8.

6-5 Special Cases

6-5.1 Headquarters Acquisitions

- A. Headquarters acquisition section normally handles the following transactions:
 1. Land owned by the United States (including property rights held by the Bonneville Power Administration, but not including lands of the Forest Service or the Bureau of Indian Affairs).
 2. Lands owned by the State of Washington.
 3. Lands owned by major railroads.
 4. Acquisitions for Equipment and Facilities.
 5. Acquisitions for the Marine Division.
- B. As soon as a region project has been approved for acquisition, the Region RESM identifies any parcels falling into categories 1, 2, or 3 in A above. Such parcels are referred in writing to the Headquarters acquisition section. Each referral is to include the following:
 1. Title report and all supplemental reports.
 2. Identification of needed land or interest.
 3. Negotiator's copy of approved appraisals and Determinations of Value.
 4. Any other pertinent information: federal aid number, right of way number, control section, parcel number, negotiation cut-off date, ad date, etc.
 5. Copy of cross sections and construction plan (for railroad acquisitions only).

(Use Memorandum Format)

TO: Regional Administrator

FROM: Region Real Estate Services Manager

SUBJECT: Request to Purchase Excess Lands
SR _____
RW _____, C.S. _____,
FA No. _____
Right of Way Plan Sheet _____ of _____ Sheets
Parcel Number _____

The owners of the above-referenced parcel have indicated a strong desire to have the state purchase the remainder of the parcel which lies outside the required right of way. This remainder has been given an "after value" of \$ _____ on the Reviewing Appraiser's Determination of Value Number _____ prepared by _____ on _____, 20 ____.

For the following reasons, we recommend that authorization to acquire this remainder as an excess acquisition be granted:

(Here state the justification for the excess acquisition.)

Recommended:

Right of Way Agent Date

Recommended:

Approved:

Region Real Estate Services Manager Date

Director, Real Estate Services Date

Memo: Request to Purchase Excess Lands
Figure 6-4.6.2.2A

6-5.2 Corporations

A corporation is a legal entity under state law and has many of the capacities of a natural person. Many of the procedures used in dealing with individuals may be adapted for use in dealing with corporations; however, several special procedures are given below. Also see Chapter 8 for procedures pertaining to acquisitions from public and private utilities.

6-5.2.1 Acquisition Procedures

A. The Region RESM:

1. Checks the title report and the records of the County Auditor or Secretary of State for:
 - a. Exact corporate name.
 - b. Payment of license fees.

Note: Nonprofit, charitable, religious, educational, and fraternal organizations are exempt from paying annual license fees, but must file an Annual Report of Officers. The Secretary of State's office can verify the corporation is in good standing.
 - c. Deficiencies or disabilities in the corporate authority; e.g., a foreign corporation not authorized to do business in this state.
 - d. Dissolved, defunct, or suspended corporations.
2. If any problems are discovered, attaches a memo to the title report which indicates to the Acquisition Agent the steps that are to be taken to resolve the problem.

B. The Acquisition Agent:

1. Examines the articles of incorporation and the bylaws of the corporation to determine who has the authority to execute instruments for the corporation.
2. Prepares a memo to the file abstracting the following information from the articles and bylaws of the corporation:
 - a. The date of incorporation.
 - b. The exact language (if any) governing the sale of real estate.
 - c. Any other information pertinent to the sale.
3. Prepares a resolution (Figure 6-5.2.1B3) and submits it to the corporate Board of Directors when:
 - a. The corporation is not in the business of buying and selling real estate, or
 - b. The sale is for a very large sum in proportion to the corporation's assets, or
 - c. The sale involves the property on which the home office of the corporation is located.
4. Upon execution of the Board of Directors resolution, or when a resolution is not appropriate, presents the proposed instrument to the corporate officers for execution (see 1, above) and affixing of the corporate seal (if there is one). Uses the corporate acknowledgment form as prescribed in Chapter 9.

6-5.3 Partnerships

- A. A partnership is an association of two or more persons to carry on a business for profit. The firm name adopted may or may not reveal the name of any partner and may contain the word “company” and so disguise the fact of partnership. Partnerships are of two kinds: general and limited. The basic difference is that a limited partnership has “limited partners” whose rights, duties, and liabilities are limited by law. This fact is of little importance in the acquisition of real property. Existence of a partnership may be disclosed in the title report, but an Acquisition Agent may be faced with acquisition from a partnership without prior warning.
- B. When required to purchase real property from a small business or from an individual operating a small business, the Acquisition Agent should be alert to the possibility that a partnership may be involved and ask pertinent questions to establish or eliminate that fact. If a partnership is involved, the Acquisition Agent’s first duty is to secure a copy of the partnership agreement and examine same to determine any provisions in regard to the conveyance of real property.
- C. Procedures
Upon determining that a partnership does exist, the Acquisition Agent:
 - 1. Secures a copy of the partnership agreement and includes it in the acquisition package.
 - 2. Has the authorized partners execute the instruments to the state (see Chapter 9).
 - 3. If a copy of the partnership agreement cannot be obtained, or if same is silent with regard to authority to convey real property, has all partners and their spouses execute the instruments to the state.
- D. The Acquisition Agent is encouraged to seek assistance from the Region Title Examiner if there are any questions about how to prepare the deed and voucher for a partnership.

6-5.3.1 Limited Liability Companies

A Limited Liability Company is a business entity that has the income tax benefits of a partnership and the limited liability of a corporation. It is composed of at least two members who must file a Certificate of Formation with the Secretary of State and prepare a Limited Liability Agreement. The Agreement established the authority of the “members” or “managers” to act on behalf of the company. Title to property vests in the name of the company and the company name must be followed by “Limited Liability Company,” “Limited Liability Co.,” or “L.L.C.” To clear title, all members must sign the conveyance document unless the Limited Liability Agreement grants authority to convey or mortgage to certain members or managers.

Resolution by the Board of Directors of the _____ company, a _____ (state of incorporation) _____ corporation.

In the matter of State Route _____.

WHEREAS, the _____ company is the record owner of the following described land:

: and

WHEREAS, in the improvement of State Route _____, by the Washington State Department of Transportation, it is necessary and advisable for the State of Washington to acquire title to the following described portion of said lands for a right of way for said highway:

: and

WHEREAS, after due consideration by the Board of Directors of the _____ company, it appears to said Board that it will be in the best interests of both the company and the State of Washington that the company convey said lands to the state of Washington by Warranty Deed for a consideration of:

NOW THEREFORE, be it hereby resolved by the Board of Directors of the _____ company, that the _____ company through its Corporate Officers, execute, and deliver said deed to the Washington State Department of Transportation.

Done at a (regular/special) meeting of the Board of Directors of the _____ company this _____ day of _____, 20____.

(Corporate Seal)

Chairman

Director

Director

Attest: _____

Secretary of the _____ Company

(Note: At least a majority of the directors must sign.)

Typical Corporate Board of Directors Resolution
Figure 6-5.2.1B3

6-5.4 Political Subdivisions of the State of Washington

Examples of political subdivisions of the state of Washington are counties, cities, towns, school districts, irrigation districts, etc. Some political subdivisions are municipal corporations (e.g., cities and school districts). Irrigation districts are not municipal corporations. In preparing instruments, etc., the Acquisition Agent should use the terminology given in the title report.

6-5.4.1 Counties

6-5.4.1.1 General Procedures

In the state of Washington, county governments may be either on a commissioner system or on a council-executive system. In either case, the Acquisition Agent makes contact through the appropriate county office. The exact process by which the county transfers real property to the state is controlled by the county's charter; however, either of the following procedures will apply:

- A. In a "commissioner system" county, the Acquisition Agent:
 - 1. Prepares the usual data package for making the state's offer (e.g., maps, firm offer letter, relocation kit, etc.)
 - 2. Makes the state's offer to the County Engineer's representative or other appropriate county official.

Note: Procedures relating to compensation do not apply to acquisition of road right of way.
 - 3. Prepares a resolution (see Figure 6-5.4.1.1A3) authorizing execution of the deed. Upon approval from the County Engineer's office, the County Commissioners pass and execute this resolution. The Acquisition Agent includes a copy of the executed resolution in the transaction package.
 - 4. Prepares the Quitclaim Deed. All three County Commissioners should sign the deed. However, the deed is legal when signed by two of them. Use the County Commissioners form of acknowledgment (see Figure 9-15).
 - 5. Prepares the Real Property Voucher. The voucher is executed by the Clerk of the Board or by any other official who has the power to bill the county's debtors.
- B. In a "council-executive system" county, the Acquisition Agent proceeds as in Section 6-5.4.1.1, except that:
 - 1. The resolution (Figure 6-5.4.1.1A3) is passed by the County Council, is executed by the Chairman of the Council, and authorizes the County Executive to execute the deed.
 - 2. The deed is executed by the County Executive or designee and the County Commissioners form of acknowledgment is adapted to fit.

RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF _____,
STATE OF WASHINGTON.

In the matter of State Route _____.

WHEREAS, the County of _____ is the record owner of the following described lands:

WHEREAS, in the improvement of State Route _____, by the Washington State Department of Transportation, it is necessary and advisable for the State of Washington to acquire title to the following described portion of said lands for a right of way for said highway:

(description)

WHEREAS, after due consideration by the Board of County Commissioners of the County of _____, it appears to the said Board that it will be for the best interest of both the County of _____, and the State of Washington that the County of _____ convey said lands to the State of Washington by Quitclaim Deed for a consideration of _____;

NOW THEREFORE, be it hereby resolved by the Board of County Commissioners of the County of _____, State of Washington, that the County of _____, in accordance with RCW 47.12.040 (RCW 84.64.320 for tax title lands) and through its Board of County Commissioners, execute and deliver said deed to the Washington State Department of Transportation.

Done at a (regular/special) meeting of the Board of County Commissioners of _____ County this _____ day of _____, 20____.

(Seal)

Chairman

Commissioner (omitted if council type
of county government)

Attest: _____
County Auditor and Clerk of the
Board of County Commissioners

Commissioner (omitted if council type
of county government)

(Note: This format may be adapted for a county using the "council-executive" system by substituting "County Council" for "Board of County Commissioners" except in the authorization for execution where the substitution would be "County Executive.")

Typical County Commissioner's Resolution
Figure 6-5.4.1.1A3

6-5.4.1.2 County Road Located Within Highway Right of Way

Using the procedures outlined in Section 6-5.4.1.1 and Chapter 9, the Region RESM secures a Quitclaim Deed from the county for all county rights of way that lie within the right of way limits of each new state highway project. This action is postponed until the transactions with all other owners are substantially completed in order to avoid the necessity for supplemental instruments due to plan revisions.

It is not necessary to recite the area of the lands conveyed.

6-5.4.1.3 Tax Title Lands

Using the procedures outlined in Section 6-5.4.1.1, the Region RESM (or his designee) secures a Quitclaim Deed from the county for all tax title lands (using a parcel by parcel form of description) that lie within the right of way limits of each new state highway project. RCW 84.64.320 provides that the consideration be for not less than the principal amount of the unpaid taxes. Therefore, contact the County Treasurer to determine the exact amount to be paid. The Deed will be prepared by the County Treasurer as provided in RCW 84.64.15. Refer unusual title problems to the Assistant Director, Title and Condemnation Program, for decision on a case-by-case basis; e.g., if the prior owner of tax title land was either a minor or an insane person, that person has three years from the issuance of the deed to reclaim the property (RCW 84.64.070). Any portions of tax title lands acquired that lie outside of the right of way limits will be excess lands and disposed of under the procedures governing such.

6-5.4.2 Cities and Towns

6-5.4.2.1 General Procedures

In the state of Washington, city and town governments may be either on a “commissioner system,” “council-mayor system,” or on a “council-manager system.” In any case, the Acquisition Agent makes contact through the City Engineer’s office. Where right of way is required from properties owned by a city or town (other than streets), the procedures outlined in Section 6-5.4.1.1 are adapted for use with such cities and towns. In any case, the transmittal includes: a copy of the passed and executed resolution, the executed deed, and the executed Real Property Voucher.

6-5.4.2.2 City Streets Located Within Highway Right of Way

- A. Non-Access Controlled Highways — When a street, etc., in an incorporated city or town is placed on the route of a non-access controlled state highway (pursuant to RCW 47.24.020), title to such street, etc., remains vested in the city or town. If the state elects to improve its highway by the widening of such a street, the additional right of way may be acquired either by the city or town or by the state, and the costs of acquisition split, as may be mutually agreed upon. By statute, the title to such additional widths vests in the city or town. If the agreement is for the state to acquire, the Acquisition Agent proceeds to do so in the normal manner (Section 6-2).
- B. Limited Access Facilities — The title to the right of way for limited access facilities vests in the state. No documents are necessary to transfer ownership of a city street to the state when it is within the right of way limits of a limited access highway.

6-5.4.3 Other Political Subdivisions

When acquiring property from any other political subdivision the Acquisition Agent adapts the procedures outlined in Section 6-5 as necessary for the political subdivision involved. Procedures for acquisitions from irrigation districts are covered in Chapter 8.

6-5.5 State Agencies

6-5.5.1 Department of Natural Resources

6-5.5.1.1 General

Certain public lands (such as school trust lands, escheat lands, forest board lands, tide and shore lands, and bed and shore lands) are managed by the Department of Natural Resources (DNR). The acquisition of rights of way over and across said lands is controlled by provisions of one of the following portions of the Revised Code of Washington:

R.C.W. 47.12.023 for all DNR-controlled lands other than rights of way over and across the beds of navigable waters and/or harbor areas.

R.C.W. 47.12.026 for rights of way over and across beds of navigable waters and/or harbor areas.

6-5.5.1.2 Procedures

A. The Region Real Estate Services:

1. When ready to appraise DNR-held property, contacts their area office to offer DNR personnel the opportunity to accompany the WSDOT appraiser.

Note: An appraisal is not required if rights of way needed are over and across beds of navigable waters or harbor areas as these rights are transferred by DNR without charge.

An appraisal is made of the ownership as if owned by a private individual.

2. Forwards appraisal, when completed, to the Appraisal Program Manager.
3. Requests Headquarters acquisition of DNR lands by letter transmitting the following acquisition package to the Assistant Director, Special Acquisitions:
 - a. Title reports and all supplemental reports (including DNR title reports).
 - b. Federal aid number, right of way number, control system number, parcel number, ad. date, etc.
 - c. Acquisition Agent's copy of appraisal with Determination of Value (DV).
 - d. Two color-coded copies of approved Right of Way Plan showing area to be acquired.
4. On request from Special Acquisition Manager clears interests (including access rights and relocation assistance entitlements, if appropriate) of lessees and/or contract purchasers.

B. The Assistant Director Appraisal and Appraisal Review:

1. Upon receipt of appraisal report, causes review thereof to be made.
2. Transmits appraisal and DV to Region RESM.

C. The Assistant Director Special Acquisitions:

1. Upon receipt of the acquisition package from the Region RESM, makes a request to Headquarters Plans section for the preparation of a land plat.
2. Upon receipt of land plat from the Plans Section, files the following items with DNR as the WSDOT's "Notice of Intent to Acquire" (RCW 47.12.023):

- a. Statement that the lands, or interest in lands, is required for right of way or other highway purposes.
 - b. Statement of just compensation to be paid for the property, based upon the department's approved appraisal, or
 - c. Statement that, pursuant to RCW 47.12.026(1) no compensation is being offered.
 - d. Original mylar of land plat.
 - e. Two paper copies of land plat, one with acknowledgment stamp.
 - f. Copy of Right of Way Plan with the area to be acquired colored in.
 - g. Request for transfer of jurisdiction.
 - h. Real Property Voucher (DOT Form 262-039) if appropriate. (If time is critical, obtain warrant with Voucher Distribution (DOT Form 134-128) and send warrant with request package.)
 - i. Request for names and addresses of all lessees and/or contract purchases having an interest in the required lands.
3. When names and addresses of lessees and/or contract purchasers (if any) are received from DNR, forwards this information to region so that these interests (including access rights and relocation assistance entitlements, if applicable) can be cleared.

6-5.5.2 Other State Agencies

6-5.5.2.1 General

Negotiations are conducted between the Special Acquisition Section and a representative of the particular agency. Normal acquisition procedures are followed in that WSDOT offers to pay market value as reported on the Determination of Value (Form RES-214). The Region RESM clears the interest of lessees and/or contract purchasers. Normal relocation assistance procedures are followed and relocation assistance entitlements are available as may be required for displacements.

6-5.5.2.2 Acceptance and Closing

- A. When agreement is reached, the Special Acquisition Section submits a Real Property Voucher (DOT Form 262-039) to the agency representative for signature and when required prepares the necessary instruments (usually a "Release and Transfer of Jurisdiction," Figure 6-5.5.2.2A, Quit Claim Deed or easement).
- B. The signed voucher is returned together with the signed instrument transferring control of the property to WSDOT. The file is processed for payment following normal procedures (see Section 6-8) and documentation is placed in the right of way parcel file. The Special Acquisition Section verifies that the Region has cleared the interests of all lessees and/or contract purchasers and transmits a copy of the signed instrument(s) to the region.

6-5.6 Federal Agencies

6-5.6.1 Forest Service Lands

- A. The Region Administrator coordinates engineering activities with the U.S. Forest Service, Department of Agriculture, from the reconnaissance stage on through final approval of the highway plans. Thus, the actual application for rights of way across U.S. Forest Service Lands is made by the Region Project Development Engineer in accordance with the 1991 Memorandum of Understanding, M 22-50 (HR). According to the provisions of the Federal Highway Act of August 27, 1958, the Federal Highway Administration on behalf of the U.S. Forest Service conveys an easement for the right of way to the state of Washington (under the terms and conditions set forth in the Letter of Consent and the separate Stipulation) by issuing a Highway Easement Deed.
- B. The Region Administrator, the Region RESM, and the Forest Supervisor of the appropriate national forest coordinate to ensure that:
 - 1. Application is made to the U.S. Forest Service for the right of way.
 - 2. All encumbrances (e.g., leases, mining claims) are cleared.
 - 3. Stipulations are agreed to and signed by the Forest Service and WSDOT Region Administrator.
 - 4. All NEPA requirements are met.
 - 5. The right of way plans submitted to the Forest Service are stamped "Reviewed" and signed by the Forest Surveyor of the appropriate national forest.
 - 6. A Letter of Consent is signed by the Forest Supervisor.
- C. Contact Headquarters Title Section for assistance with any of the above. When all of the above are completed, the title Section will contact the Federal Highway Administration and complete the Easement Deed process.
- D. Temporary uses of national forest land outside of the easement area can be acquired by the Region RESM (or designee). Temporary use, such as a waste site, only requires a Special Use Permit from USFS.

TO: State of Washington Department of Transportation

FROM: State of Washington Department of _____

WHEREAS, the State of Washington, Department of _____ has jurisdiction and control of certain lands required for highway purposes, said lands being situated in _____ County, State of Washington, and more particularly described hereinafter; and

WHEREAS, the State of Washington, Department of Transportation, desires to purchase jurisdiction and control of said described lands for highway right of way purposes and will pay the full appraised value of said lands, which value is _____ dollars (\$ _____); and

NOW THEREFORE, be it resolved by the State of Washington, Department of _____, that upon payment of the sum of _____ dollars (\$ _____), which constitutes the appraised evaluation there is hereby released and transferred to the Washington State Department of Transportation, all jurisdiction and control of the State of Washington, Department of _____, in and to the following described lands:

(description)

The lands herein transferred contain an area of _____, more or less, the specific details concerning all of which are to be found within that certain map of definite location now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, entitled State Route _____, _____ and bearing date of approval _____.

Also, the State of Washington, Department of _____, herein transfers to the Washington State Department of Transportation all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) from and between State Route _____, _____ and the remainder of said _____, except (insert access reservations).

ADOPTED this _____ day of _____, 20____, State of Washington, Department of _____.

Director, Real Estate Services

(Acknowledgment)

Release and Transfer of Jurisdiction and Control
Figure 6-5.5.2.2A

6-5.6.2 Bureau of Indian Affairs

The Bureau of Indian Affairs, U.S. Department of the Interior, has jurisdiction over applications for rights of way across Indian lands (Title 25 CFR, Section 169). The Region RESM contacts the Superintendent of the Indian agency (or other official of the Bureau of Indian Affairs) whose responsibilities include the lands involved. In completing the transaction, the Acquisition Agent complies with all the regulations and requirements of the Bureau of Indian Affairs, and acquires any needed releases of lease.

6-5.6.3 Other Federal Agencies

The Special Acquisition Manager:

- A. Applies to the FHWA as provided in Title 23 USC Section 107(d) (Interstate) or Section 317 (other federal aid systems or other projects to be constructed, all or in part with federal funds) when either:
 1. The federal agency that controls the needed lands does not have the authority to grant rights of way.
 2. The federal agency that controls the needed lands wishes to proceed under Title 23 USC, Section 107(d) or Section 317.
- B. When any of the following agencies wish to handle their own transactions, applies to the appropriate agency:
 1. U.S. Army or Air Force — Installation Commander and Region Engineer, Corps of Engineers, Department of the Army.
 2. U.S. Navy — Region Public Works officer of the appropriate Naval Region.
 3. Veterans Administration — Director, Veterans Administration, Washington, D.C.
 4. U.S. Department of the Interior
 - a. Bureau of Land Management — Either Chief, Branch of Lands and Mineral Operations, (BLM), Portland, Oregon, or Manager, (BLM), Regional Office, Spokane, Washington.
 - b. Bonneville Power Administration — Chief, Branch of Lands, (BPA), Portland, Oregon.
 - c. National Park Service — Supervisor of the local installation.
- C. Includes the following in the request:
 1. The purpose for which the lands are to be used.
 2. The estate or interest in the land required and/or extent of access control.
 3. Federal aid project number.
 4. Name of the agency having jurisdiction over the land and present use of the land.
 5. A commitment by the state to commence use of the land for the intended purpose within a period of not more than 10 years following the transfer of the land to the state.
 6. An approved map showing parcel number, area of the needed lands, and extent of access control.
 7. The legal description of the needed lands to conform to the survey of the needed lands as same appears on the maps.

8. Assurance of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.); the Historic Preservation Act, 16 U.S.C. 470 (f), and with the Preservation of Parklands Act, 49 U.S.C. 1653 (f), if applicable.
9. Assurance of compliance with Title VI, Civil Rights Act of 1964 (49 CFR 21).
10. If the application is directed to the FHWA, a proposed Highway Easement Deed (DOT Forms 262-119 or 262-120, as applicable).

6-5.7 Sundry Sites

6-5.7.1 Materials Sites

- A. A materials site is acquired either in fee (preferred) or by lease (see Section 6-6.4). In either case, one or more options (with respect to purchase and/or renewal) may be secured during the acquisition process.
- B. Although the procedures for the acquisition of a materials site are similar to those for any other right of way acquisition, the following special procedures are applicable:

1. A Reclamation Plan is prepared by the region for each site in accordance with requirements of the *Plans Preparation Manual* (M 22-31). Since the Reclamation Plan is an excellent source of information and an aid to settling with the owner, a copy of the plan is included in the parcel file that is furnished to the Acquisition Agent.
2. When other than a fee interest in a materials site is to be acquired by the state, the concurrence of the owners/lessors in the concept of the Reclamation Plan is required. The Acquisition Agent submits the Reclamation Plan to the owners/lessors during negotiations and seeks their concurrence. Assuming such concurrence, the Acquisition Agent prepares a Memorandum addressed to the Region Administrator stating:

“The (owners/lessors/etc) of this site have reviewed the Reclamation Plan, approved (dated), and concur with its concept.”

Note: The original of the Memorandum goes to the Region Administrator, and two copies are included with the data transmittal to Headquarters.

3. If the owners/lessors do not concur in the Reclamation Plan as presented, the Acquisition Agent breaks off negotiations, notes the owners/lessors objection to the Reclamation Plan, and advises the Region RESM of the facts.
4. The Region RESM reports the objections to the Region Administrator, and obtains either a modified Reclamation Plan or a decision to condemn the parcel. The Acquisition Agent is advised accordingly, and either resumes negotiations or turns the parcel in for condemnation.
5. The Acquisition Agent acquires an equivalent interest in the right of way for any needed access road (e.g., if the site is being acquired in fee, the access road is acquired in fee or by easement).

Note: Temporary access to a site is acceptable only when the state obtains either a temporary interest in the site or when an alternate access will be established.

6. If all efforts to acquire a fee interest in the materials site by negotiations fail, the Acquisition Agent refers the matter to the Region RESM.
7. After proceeding as described in Section 6-6, the Region RESM instructs the Acquisition Agent whether to negotiate a lease, file a Negotiator’s Report, or to begin negotiations for an alternate site.

6-5.7.2 Facility Sites

Facilities are managed by the Equipment and Facilities Office. Any decision to purchase, lease, or sell any such facility must have the approval of the Capital Facilities office. Within the computerized property inventory, property types PS (Pit Sites), SP (Stockpile Sites), and CI (Capital Inventory) comprise the Capital Facilities inventory.

Otherwise, the procedures for the acquisition of a capital plant site are similar to those for any other right of way acquisition.

6-5.8 Timber and Crops

WSDOT desires that its projects be environmentally compatible and aesthetically pleasing. Therefore, to the greatest extent possible, the natural vegetation is left intact within the limits of the right of way.

6-5.8.1 Rules

- A. To the greatest extent practicable, WSDOT acquires timber standing on the right of way, and discourages the property owner from retaining salvage. The Determination of Value will reflect compensation for the timber.
- B. With respect to crops other than timber, the property owner is permitted to harvest the crop if this will not interfere with the construction schedule. (Care must be taken to distinguish the crop from the fruit trees or vines producing it. The trees or vines themselves stand in the same situation as timber as discussed in A, above.)

6-5.8.2 Procedures

- A. The Acquisition Agent does not offer timber for salvage.
- B. If the property owner refuses to settle without being allowed to salvage at least some of the timber, the Acquisition Agent refers the matter to the Region RESM.
 1. The Region RESM coordinates with the Region Administrator and obtains either:
 - a. Approval to permit the owner to log the right of way.
 - b. Approval to permit the owner to log specified area(s) within the right of way. In this case, the permitted area must be described in the instrument, mapped and flagged, or staked on the ground.

Note:

- (1) In each of the above cases, the Region RESM requests that a Salvage Appraisal Report (DOT Form 263-003) be made with respect to the amount of logging by the Region Administrator.
- (2) In each of the above cases, the property owner must agree to abide by the State Forest Practices Act as amended (RCW 76.09) and any restrictions which might be imposed by the WSDOT's environmental plan for the project.
- c. Denial of permission to log the right of way.
2. The Acquisition Agent proceeds as instructed. If any timber cutting is allowed, the value of the timber salvage is shown on the Salvage Appraisal Report.

- C. With respect to crops other than timber (see Section 6-5.8), the Acquisition Agent permits the property owner to harvest the crop provided this can be accomplished without interfering with the department's construction schedule. Also the owner must be willing to execute a rental agreement if the crop cannot be harvested before the state assumes control of the property (see Section 6-7).
- D. Timber acquired under B or C, above, is reported on the Fixtures and Improvements Agreement (Form RES-335). Salvage rights, if any, sold back to the property owner are also indicated on this form. Agreement with respect to compliance with the State Forest Practices Act and the department's environmental plan for the project are inserted in the remarks section. A rental agreement is required for any period of salvage activity after the payment date.

6-5.9 Mining Claims

The following sections cover procedures for acquiring both patented and unpatented mining claims. Mineral rights and reservations are covered in Chapter 8.

6-5.9.1 General Procedures

- A. The Region RESM contacts the U.S. Bureau of Land Management (BLM) to determine whether the right of way crosses lands "open to mining claims." If so, the Region RESM files an application with the BLM to have the right of way withdrawn from the "open" lands. This procedure insures against the filing of future mining claims within the right of way. Mining claims filed on other than "open" lands are invalid and may be ignored. When a mining claim is found to be invalid because it was filed on other than "open" lands or because of any other reason, the fee ownership must be determined and dealt with.
- B. To determine the existence of valid mining claims, the Region RESM:
 - 1. Checks the mining claim records at the county courthouse.
 - 2. Makes an on-site inspection of the project. Checks for the existence of unpatented mining claims on patented mining claim lands for overlapping claims, etc.
 - 3. Interviews area residents and prospectors.
 - 4. Has the BLM determine the validity of all existing mining claims.
- C. Usually mining claims are acquired for a nominal amount (up to \$500). However, a valid, mineral-rich, and actively worked claim may not be available on this basis. In this case, the Region RESM has the mining claim appraised by a licensed professional mining engineer. After the specialist report is filed, appraisal review and acquisition proceed in the normal manner.
- D. If the claim holder wishes to retain the subsurface mineral rights, the Acquisition Agent uses the procedures in Chapter 8 as well as those given below.

6-5.9.2 Patented Mining Claims

A patented mining claim is essentially a fee ownership; however, several special steps must be followed:

- A. The Region RESM checks the conditions and stipulations in the patent. For example, timber rights are often reserved by the United States. If ignored, this could result in an overpayment to the patentee.
- B. The Acquisition Agent proceeds in the same manner as for any other fee ownership. If the on-site inspection reveals any unpatented mining claims on the property or other problems arise, the Acquisition Agent reports this to the Region RESM and awaits further instructions.

6-5.9.3 Unpatented Mining Claims

An unpatented mining claim is the personal property of the claimant and is only a possessory right. However, the courts have ruled that this possessory right is a real property interest that is compensable in eminent domain proceedings. In effect, it is an encumbrance, and acquisition of the right does not provide the department with all interest in real property.

The Acquisition Agent offers a nominal payment (up to \$500) for a Quitclaim Deed (Form RES-306) to clear the mining claim.

6-5.10 Water Rights

Water rights, being most frequently encumbrances rather than subjects of acquisition, are covered in Chapter 8.

6-5.11 Wells, Springs, and Septic Systems

A well, spring, or septic system lying within the area to be acquired may be a damage item and as such will be covered in the appraisal of the property. Wells, springs, or septic systems lying within the remainder may become a problem. After completion of a project, the owner may file a claim that the project has impaired the quality and/or quantity of the water or damaged the septic system. To determine the validity of the claim, it is necessary to have data on the quality and quantity of water produced by the well or spring prior to construction of the project. See Chapter 8 for procedures on obtaining tests prior to construction. See Section 6-6 for Damage Claims.

Well and septic problems can sometimes be handled with the use of agreements. The decision to use a Well or Septic Agreement should be made by the Real Estate Services Manager with input from the Appraiser and the Appraisal Supervisor. If it is decided to use a Well or Septic Agreement, the department needs to be reasonably assured that a system can be replaced on site. A visit to the County Health Department or an appropriate specialist is highly recommended. While a detailed analysis or cost breakdown is not required, the opinion of the county or specialist on the type of system required should be documented.

If the system cannot be replaced, a Well or Septic Agreement cannot be used. In this case, a before and after appraisal with appropriate damages should be completed. If research reveals that an agreement would be appropriate, then the appraisal report can be completed with the stated assumption that the system will be replaced in an adequate fashion.

6-5.12 Registered Lands (Torrens Title)

- A. When a title report shows that a parcel is registered land and that the duplicate certificates are not on file in the Registrar's office, the Acquisition Agent includes the following items together with the usual instrument, voucher, etc., in the transaction package:
 1. The owner's duplicate certificate of ownership. If the original "owner's duplicate" has been lost, the owner must execute an affidavit, file it with the Registrar (County Auditor), and apply to the courts for an order to issue a new duplicate certificate.
 2. The mortgagee's duplicate certificate, if there is a mortgage to be satisfied or partially released.
 3. The lessee's duplicate certificate, if there is a registered lease (for a term of three years or more) to be released.
- B. All instruments that are to be filed must be prepared and executed in duplicate, in order to provide an instrument for Headquarters' records (the Registrar retains the original as part of the county's records).
- C. In the event that a parcel of registered land is condemned, the Acquisition Agent proceeds as described in Section 6-10.

6-5.13 Special Benefits

- A. The subject of special benefits may arise in partial acquisitions. In this state, it is necessary to differentiate between and understand three concepts wherein value may be created by a pending highway improvement. The three concepts are defined as follows:
1. Enhancement — Increases in real estate values in advance of right of way acquisition created by knowledge of pending highway improvement.
 2. Special Benefits — Value accruing to the remainder of a property by reason of acquisition and use by the state of a portion of such property where such value is special to said remainder and not enjoyed by the general public. Benefits may be special even if other owners on the facility receive similar benefits.
 3. General Benefits — Washington law does not clearly define general benefits. Because of this we have only attempted to explain special benefits and will assume that any benefits which are not “special” may be properly considered to be “general” benefits.
- Under both state and federal procedures, an owner may not receive compensation based on values due to “enhancement.” In federal condemnation cases, both special and general benefits must be offset against compensation for the part being acquired and/or damages. In state condemnation cases, only special benefits are to be offset against compensation for the part being acquired and/or damages.
- B. The Acquisition Agent:
1. Shows the amount of special benefits charged (as shown on the Determination of Value) in the Fair Offer Letter (Figure 6-2.2H) by adding the appropriate clause.
 2. Adds Clause B to the Fair Offer Letter and attaches a copy of RCW Chapters 8.25.210 through RCW 8.25.260 to the owner’s copy of the Fair Offer Letter.
 3. Modifies the owner’s receipt for the Fair Offer Letter to include receipt of a copy of the statutes.
 4. Gives the owner adequate time to consult with counsel of choice before attempting closure.

6-5.14 Toxic/Hazardous Waste Situations

Initial site assessments and preliminary site investigations should have already been conducted before the acquisition agent is assigned the property. Chapter 4 contains information on the indications of a contaminated site.

- A. When the appraisal indicates a parcel is listed in the Hazmat Database, the acquisition agent will consult with the Environmental Service Office (ESO), the Region RES Manager, and the Assistant Director for Title and Condemnation for the appropriate method of mitigating the risk to WSDOT. Items F and G below provided direction.
- B. When a potential hazardous waste or contamination situation is observed or indicated to the acquisition agent, the agent will complete a hazardous waste checklist and submit it to the Region RES Manager. The checklist can be found in Appendix 11-2.
- C. The Manager will forward to ESO with a copy to the Project Engineer and the Project Development Engineer. When a contaminated site is discovered at this stage of the right of way project, there could be significant project delays, therefore it is imperative the project managers be notified.
- D. ESO will report back with its assessment and estimates for costs to clean up the contamination.

- E. The Region Appraisal Supervisor should be consulted to determine if the appraisal needs to be revised. IF so, a new offer will need to be presented.
- F. Several methods of clean up procedures can be used. These will be unique to each parcel and the following list in note meant to be the only methods available. Each method should be discussed with the Region RES Manager and Assistant Director for Title and Condemnation to assure proper risk assessment and avoidance is applied.
 - 1. The property will be purchased as if clean and the acquisition agent withholds the clean up costs from the compensation. The risk is the estimate may over or understate the clean up costs. Depending on the confidence of the ESO in the estimate and the potential for additional contamination, and indemnity clause may be needed in the deed.
 - 2. The property is purchased as if clean and the property owner agrees to an indemnity clause in the deed. This means the owner will be liable for any future clean up costs.
 - 3. The funds to acquire the property can be placed in escrow. The property owner then cleans up the contamination using draws on the escrowed funds to pay for the clean up. This method will only work on early acquisitions or shelf projects as there is not usually sufficient time to clean up a site in our construction schedule. Once the site is cleaned to ESO's satisfaction, the remaining funds can be released. Indemnity language may or may not be needed in the deed, depending on the risk of future clean up costs.
 - 4. If the appraisal used contaminated sales, the diminution of value due to the contamination is recognized and no indemnity language would be needed in the deed. It is extremely unusual that this situation will occur without extensive environmental investigation and very substantial sales comparisons in the appraisal.
 - 5. Prospective Purchasers Agreements. The Washington State Department of Ecology has a procedure for resolving the liability for a particular site prior to the purchase of the site. This procedure involves entering into what is known as a prospective purchaser agreement. Through this process, the agency is able to negotiate with Ecology prior to purchase to limit the extent of the agency's responsibility.
 - 6. When access rights only are acquired, there is no need for an indemnity clause or a deduction for clean up costs.
- G. ESO and RES will need to work together to assure the appropriate measures are used in the clean up of the property. ESO will process all Department of Ecology filings.
- H. Until such time when the REIS database and the Hazmat database are linked, the acquisition information is entered into the Hazmat Database by the HQ Title Examiner.

6-6 Acquisition of Less Than Fee Simple Title

6-6.1 Access Rights Only

- A. When only the access rights are to be obtained, the Acquisition Agent proceeds in much the same manner as for a normal acquisition (see Sections 6-2, 6-3, 6-8). The Acquisition Agent obtains a Warranty Deed, Access Rights Only (Form RES-305), and clears encumbrances (see Chapter 8).

- B. When a limited access facility is being built in an entirely new location and when its right of way and access lines coincide with an ownership boundary, the Acquisition Agent acquires the abutting owner's access rights (in the usual manner) only if such abutting owners have a previously existing legal access; i.e., have legal access to or through the neighbor's private property, which is being acquired by WSDOT.
- C. When a conventional facility is being converted into a limited access facility, the Acquisition Agent acquires the abutting owner's access rights in the usual manner.
- D. Compensation for loss of access (A, B, and C, above) is justified only if so indicated by a valid Before and After Appraisal and Determination of Value.
- E. If no access restriction is shown on the right of way plans, access cannot be acquired without prior written approval from the DRES and the Access and Hearings Engineer.
- F. If it appears that a change in the Access Plan would be in the best interest of the state, the Acquisition Agent proceeds as described in Section 6-4.

6-6.2 Easements and Permits

6-6.2.1 Rules

- A. WSDOT normally acquires fee title to all lands lying within the right of way of a programmed project.
- B. WSDOT may acquire either fee title, easements, or permits when property rights are needed outside the right of way prism.
 - 1. WSDOT acquires fee title when it needs the exclusive right of use and occupancy of the property for itself or for transfer to another public service agency.
 - 2. WSDOT may acquire an easement when it needs a continuing, nonexclusive right to enter upon the property of another. The easement will set forth the WSDOT's right to the use of the property under specified circumstances and/or conditions for either a limited or an unlimited time period. An easement can be created either by gift or by purchase; it can be transferred; and it can be extinguished by sale, abandonment, or relinquishment. The following are examples of typical easement situations:
 - a. An easement for cut or fill slopes, provided that:
 - (1) The slope can be put to use with the adjoining lands without detriment to the state's project (e.g., grazing land).
 - (2) The slope may be eliminated in the future by bringing the abutting lands to the same grade as the highway facility.
 - b. An easement for the construction of and continued access to project protection features (e.g., channel change, drainage).
 - c. An easement for land needed to replace the functional requirements of an existing easement.
 - 3. WSDOT acquires either a construction permit or a temporary easement when it needs the temporary right to enter upon the property of another. The easement or permit will set forth the WSDOT's right to the use of the property under specified circumstances and/or conditions for a limited time period. The document will also include details of or reference to a plan for any restoration to be performed by the state on the site. An easement or permit can be created either by gift or by purchase, and is extinguished in accordance with its terms. The following are examples of typical easement or permit situations:

- a. Temporary Easement. This easement is used when the state requires a property right of a temporary nature that involves more than minor work. In most cases, the rights required or the work to be performed is not beneficial to the property owner and just compensation will be paid. The temporary easement will expire by its own terms by inclusion of a statement to the following. "The temporary rights herein granted shall terminate within _____ years from date hereof." Caution should be taken to allow ample time for completion of construction and the opening of the highway to traffic.
- b. Construction Permit. The construction permit is used for temporary rights during construction and should not be used when WSDOT needs a perpetual right. A construction permit is valid with the current owner only and must be renegotiated if property ownership changes before construction begins.
 - Construction permits will be drafted by the Region Real Estate Services Office. They will also fulfill the criteria listed below.

Characteristics of a construction permit are as follows:

 - Will involve relatively minor work that is acceptable to the property owner, such as driveway reconnections, slope flattening, and/or contouring.
 - In most situations where no other property rights are to be acquired from the same ownership as a part of the same project.
 - The construction permit is normally obtained without payment of compensation (donation/mutual benefits).

If at any time during the acquisition process it becomes apparent that the required permit no longer matches the qualifying characteristics, a temporary easement must be obtained following the formal process as noted herein.
4. Construction Permits — Definitions, requirements, and disposition.
 - a. Execution of instrument need not be notarized.
 - b. Need not be submitted to or approved by Headquarters Real Estate Services Office.
 - c. Executed permit is retained in Region Real Estate Services Office in a file created for that purpose.
5. Condemnation. Temporary easement or permit areas to be acquired by condemnation must be shown on the official Right of Way Plan.
6. Lands areas in which less than fee simple title is required are identified on the approved Right of Way Plan.
7. Appropriate instrument formats are described in Chapter 9.
8. The recording of Temporary Easements and Construction Permits will be based upon the following:
 1. The temporary rights are shown on the R/W plan.
 2. Value is \$1000.00 or more.
 3. That it has a term of more than six (6) months.
 4. That there is an expiration date.

6-6.2.2 Procedures

A. The Region RESM:

1. Obtains from the Development Engineer sufficient information defining how or for what purpose a property is to be used. This will allow determination of the type of instrument of conveyance (i.e., deed, easement or permit) and compose the appropriate language of conveyance that will obtain all and only those property rights that are necessary, in accordance with Chapter 9.
2. Obtains appraisals and appraisal review or administrative determinations of value in the normal manner determining the appropriate compensation for those rights being affected, unless there has been advance notice that the owner intends to donate the needed property rights (see Section 6-1).

B. The Acquisition Agent:

Obtains the conveyance and whatever other instruments, vouchers, etc., may be required.

1. Relocation assistance normally is not involved in the acquisition of an easement or permit, but if such acquisition should cause a displacement, relocation assistance is applicable to the same degree that it would be in a fee acquisition.
2. Property management normally is not involved in the acquisition of easements or permits (but see Chapter 11 for “after acquisition responsibilities”), except in the situation where improvements lie within the easement or permit area or the duration of the easement or permit is for more than 10 years (See Section 6-4).
3. If the owner elects to donate the required property rights, complies with Section 6-3.

6-6.3 Access Easement for Transfer (Managed Access Routes Only)

6-6.3.1 Rules

When a R/W plan shows an “Access Easement for Transfer” across a private owner (A), the servient tenement, to serve another single private owner (B), the dominant tenement, we cannot condemn for the easement. We cannot use public money to condemn a private access for a third party because this situation is not a PUBLIC USE as defined in RCW 8.04.070.

Owner A does not have to grant the easement to Owner B. Owner B does not have to accept the easement across Owner A.

6.6.3.2 Procedure

1. The Region orders title reports for both parcels and assigns state parcel numbers. Both parcels need to be shown on the right of way plan.
2. Prior to plan approval, the region should have an agreement from both parties accepting the proposed easement.
3. During the appraisal stage of acquisition, the appraiser prepares a two-premise report for each property. The Before description and valuation is the same for both premises. The After description and valuation is different.
 - a. For Owner A, the first premise in the After situation is without the easement. The second premise in the After is with the easement.
 - b. For Owner B, the first premise in the After situation is without the easement from Owner A. The second premise in the After situation is with the easement from Owner A.

The Determination of Value is handled the same way so that the acquisition agent will have all the information required to cover the situation.

4. Upon establishment of just compensation, the acquisition agent proceeds with the acquisition. If either owner is unwilling to agree to the easement, then the easement is removed from the right of way plans and revised offers are made.

6-6.4 Change of Grade

6-6.4.1 General

Once the grade of an existing street, road, or highway has been established, any change of that grade may cause a compensable damage to any abutting property owner. The fact that a change of grade can be accomplished within the existing right of way does not eliminate the need to negotiate with the abutting owner.

6-6.4.2 Procedure

- A. When right of way is being acquired from the abutting owner, the Acquisition Agent proceeds with the acquisition in the normal manner (see Sections 6-2, 6-3, and 6-8). Damages, if any, will appear in the Determination of Value.
- B. When no land is being acquired from the abutting property owner, the Acquisition Agent has the property owner execute the Consent to Change of Grade (Form RES-323) (see Chapter 9) and voucher if appropriate (see Chapter 10), and prepares the transmittal as specified in Section 6-8. Compensation, if any, is determined through the appraisal process (see Chapter 4).

6-6.5 Leases

6-6.5.1 Rules

- A. For the acquisition of temporary rights, WSDOT uses a lease if a permit or temporary easement does not secure adequate interest and if a lease is customarily used in private real estate practices involving the types of rights required.
- B. If WSDOT is unable to acquire a materials source or other sundry site in fee and temporary rights are determined to be an acceptable alternate for the state, a lease is generally used.

6-6.5.2 Procedures

- A. The Region RESM determines the appropriate instrument of conveyance to be used.
- B. If it is impossible to negotiate a purchase of a materials site, the Region RESM:
 1. Obtains information from the Region Administrator on quantities and types of materials to be removed.
 2. Coordinates with the Deputy Director of Real Estate Services to determine the Attorney General's opinion with respect to condemnation of the site.
 3. Obtains appraisal(s) and appraisal review(s).
 4. Submits recommendations to the Region Administrator regarding a proposed lease. These recommendations include:
 - a. The Reclamation Plan as prepared in accordance with the reference cited in Chapter 1.
 - b. The Attorney General's opinion regarding condemnation of the site.
 - c. The potential resale value of the site after reclamation.

- d. The amount of material required, and its estimated cost on a lease basis.
- e. Lease for _____ (Form RES-418) completed as specified in Chapter 9.
- 5. Upon receipt of Region Administrator's approval or rejection, takes the appropriate action:
 - a. If approved, instructs the Acquisition Agent to secure the owner's execution of the lease.
 - b. If disapproved and no alternative material site is available, submits the parcel for condemnation per Sections 6-10 or 6-11.
- C. If so instructed, the Acquisition Agent proceeds as described in Section 6-5, obtains the owner's execution of the appropriate lease, concurrence with the concepts of the Reclamation Plan (see Section 6-5), and transmits the lease and other associated data as specified in Section 6-8.

6-6.6 Damage Claims

6-6.6.1 Initial Action

- A. Upon receipt of a claim for damages from a property owner, the Region RESM starts a Diary of Right of Way Activities (Form RES-301), and investigates the basis for the claim.

Note: A damage claim may be initiated by an oral communication and preliminary investigation made on the basis of that communication. An alleged damage must be claimed in writing, however, before it can receive any official status. No format is prescribed.

Note: Investigators are to obtain the facts, but are not to make any comments on cause or liability to the claimants.

Note: If a construction project is ongoing in the area of the claim, the Region RESM and the Project Manager should investigate the possibility of having the problem corrected by the contractor.

If the claim is based on taking or damaging of private property or property rights for which the owner has not been paid and rights will need to be acquired, the claim is a right of way responsibility; however, if the claim appears to be based on tort liability (i.e., contractor carelessness, etc.), the claim is forwarded to the department's Risk Management Office. If it is unclear who should have responsibility for the claim, the package should be forwarded to Risk Management for their input. If the claim is determined to be the responsibility of Risk Management, they will take over the processing of the claim and Real Estate Services will only be involved if requested by Risk Management to help with claim resolution. It is possible that some claims have elements that cross boundaries and responsibility may be shared.

Note: In general, Tort Claims have a three-year Statute of Limitations and Inverse Actions have a ten-year Statute of Limitations.

- B. If the claim is determined to be a damage (the responsibility of RES), then the Region RESM submits a report to the DRES including:
 - 1. The original written claim.
 - 2. A copy of the Diary of Right of Way Activities stating the facts and conclusions developed as a result of the investigation of the case.

3. An estimate of the direct costs to WSDOT if WSDOT is found liable for settlement.
 4. All related correspondence.
 5. Maps and/or information identifying the geographic location.
 6. Damage Claim Evaluation (DOT Form 220-025) signed by Region RESM.
- C. The DRES opens a new Diary of Right of Way Activities by an entry showing receipt of the damage claim, maintains the file, and coordinates all further activities.
 - D. If there is any doubt about department liability, the DRES refers the case to the Attorney General Division for an opinion.
 - E. Upon receipt of the opinion of the Attorney General, the DRES forwards same to the Region Administrator with the directions to proceed as indicated in Section 6-6 as appropriate.

6-6.6.2 Procedures — State Liabilities

- A. The Region Administrator's staff prepares and submits the following data to document the Work Order Authorization (DOT Form 160-020) as specified in Chapter 1.
 1. An estimate of all necessary costs including:
 - a. Title report (if needed).
 - b. Salaries (appraisers, reviewers, title examiners, acquisition agents, relocation agents, property management agents, administration).
 - c. Travel and per diem.
 - d. Appraisal fees.
 - e. Specialist fees.
 - f. Cash settlement.
 - g. Relocation assistance entitlements.
 - h. Property management expenses.
 - i. Costs (other than cash settlement) of state force or state contract activity to resolve damage.
 2. A copy of the Diary of Right of Way Activities stating the facts and conclusions developed as a result of the investigation of the case.
 3. A statement as to what costs are chargeable to construction.

Note: If the damage or taking was the result of construction (e.g., owner's basement cracked by vibration or blasting, etc.) the claim is chargeable to construction. If the damage was due to a taking of additional property, the claim is chargeable to "right of way acquisition."
- B. Upon receipt of the Work Order Accounting Plan, the Region Administrator expedites the settlement transaction by using the normal right of way acquisition procedures including appraisal and Determination of Value addressed to the dollar amount of the damages. Instruments and vouchers are drawn and executed as appropriate to the settlement.
- C. When the transmittal is received in Headquarters, the DRES submits the settlement transaction to the Attorney General (AG) (Transportation Division) for certification and approval of the voucher. Upon approval, the AG stamps the voucher and signs it. The text of the AG's stamp is as follows:

This voucher is in payment for private property taken or damaged for public use without just compensation having been first made to the owner in violation of Article 1, Section 16, of the constitution of the State of Washington.

Approved for Payment

Assistant Attorney General

This step is required when the release of damages is being obtained due to an unconstitutional entry and use of private property without prior negotiation and agreement with the property owner.

- D. If WSDOT's settlement offer is rejected by the claimant, condemnation reports are informational and are submitted in the normal manner, but these reports are not acted upon directly by the Attorney General (Transportation Division). Instead, the Acquisition Agent informs the claimant that to obtain a settlement it will be necessary for the claimant to file legal action (i.e., inverse condemnation) against WSDOT.

6-6.6.3 Procedures — State Not Liable

When the Attorney General (Transportation Division) determines that WSDOT is not liable, the Region Administrator informs the claimant by letter, and sends a copy of the letter to the DRES. The Region Administrator calls upon the DRES and the Attorney General (Transportation Division) as needed in preparing the letter. The letter may be hand-delivered by the Acquisition Agent thus permitting a personal explanation.

6-7 Ownership and Occupancy

6-7.1 General

- A. Definitions
1. Ownership — WSDOT acquires ownership of property and/or property rights on the "payment available date" (when payment is made available to the owner).
 2. Early Occupancy — The right to use and occupy the property subsequent to settlement agreement and prior to ownership.
- B. In the case of lands occupied by persons, personal property, business, or farm operation, WSDOT acquires ownership, but cannot acquire occupancy without providing the owners and tenants with a written assurance at least ninety (90) days prior to the earliest date by which they could be required to vacate the property as specified in Chapter 12.

6-7.2 Rules

- A. In the case of unimproved property, the appropriate occupancy clause is included in each instrument of conveyance (see Chapter 9). In cases involving improved properties, the occupancy clause is included in the Fixtures and Improvement Agreement, and is not included in the conveyance documents.
- B. Any occupancy by the grantor or tenant after the state acquires ownership requires payment of rent to WSDOT. Any rent free occupancy is considered as an inducement for settlement and can be offered only with prior approval from the DRES.
- C. Rental to the original displaced owner or tenant beyond the initial 90 day period is allowed only with prior written approval by the DRES (see Chapter & Chapter).
- D. Rental rates to original displaced Owner or tenant may not exceed fair market rent.

6-7.3 Procedures

The Acquisition Agent:

- A. Coordinates with the Property Management Agent to determine the amount of rent and any leasehold excise tax which will be required after the state acquires ownership (see Chapter 11).
- B. Advises owner:
 - 1. If property is occupied, the tenant will be required to sign a lease with WSDOT and surrender occupancy in accordance with the terms of the lease once WSDOT acquires ownership of the property. The lease cannot terminate prior to the displaced occupant being provided with their Notice of Eligibility, Entitlement, and 90 Day Assurance letter. This also applies to those parcels where just personal property is involved
 - 2. That WSDOT is required by law to advise any tenants of their rights and entitlements under the Uniform Relocation Assistance Act. The owner is advised that it is the WSDOT's policy to discourage tenants from vacating the subject prior to the sale to the state.
 - 3. That the owner's right to collect the rents of tenants in occupancy terminates on the date WSDOT makes payment for the property available to the owner, and that the collection of such rents should be adjusted accordingly.
 - 4. During negotiations, ensures that the owner is fully aware of the amount of rent to be collected after WSDOT acquires ownership and any other terms or conditions which may be required (i.e., leasehold excise tax).
- C. Selects the appropriate occupancy clause from Chapter 9 and inserts it in the instrument(s) of conveyance.
- D. Obtains execution of the instrument(s), and, if required, the Fixtures and Improvements Agreement.
- E. When tenants occupy acquired improvements, the agent inquires of the tenant if a deposit has been paid to the landlord. The agent should determine the amount of the deposit and if it includes last month's rent.
 - 1. If there is no deposit of last month's rent, the agent documents this fact in the diary.
 - 2. If a deposit and/or last month's rent exists, it must be dealt with by deducting said amount from the primary payment voucher and preparing a secondary voucher paying said amount to the tenant or tenants.
 - 3. If the landlord elects to refund the amounts directly to the tenant, acquires evidence of this fact from both landlord and tenant, and documents this in the diary.

6-8 Acquisition Transmittal

After acquiring or clearing all interests in a parcel, the Acquisition Agent prepares the data package for transmittal.

Note: All interests in each respective parcel must be acquired, cleared or noted for future clearance (see Chapter 8). If any one interest cannot be acquired, cleared or noted for future clearance, the Acquisition Agent refers the parcel for condemnation using the procedures of Sections 6-10 and 6-11.

6-8.1 Right of Way Parcel Transmittal (DOT Form 262-048)

Having successfully negotiated a transaction, the Acquisition Agent prepares the Right of Way Parcel Transmittal, as follows:

A. Identification and Headings

1. Right of way project number, state route, title, federal aid number, control section number, and right of way number. Inserts official data for the parcel.
2. Grantors — Inserts the grantor's name.
3. Inventory control number — To be completed by the Property Management Agent (see Chapter 11).
4. Contract ad date (if scheduled) — Insert the currently scheduled ad date for the first construction project that will require the availability of this property or property right.
5. Map sheet — Inserts appropriate map sheet number (e.g., 13 of 47).
6. From — Inserts closing Right of Way Agent's name.
7. Initial/supplemental transmittal — Places an "X" in the appropriate box to indicate whether this is an initial or a supplemental transmittal, and inserts the date in the blank provided. If this is a "supplemental transmittal," places an "X" in the appropriate box to indicate whether the "initial transmittal" was an "acquisition" or a "condemnation," and inserts the date of the initial transmittal in the blank provided.

B. Transaction Data

1. Real Property Voucher(s) — Inserts the amounts of each voucher.
2. Instruments — In the space provided, indicates the types of executed instruments attached (e.g., warranty deed, partial reconveyance, exchange agreement).
3. Encumbrance Report — Shows the method of clearance of every encumbrance on the title report and on all supplemental reports (see Chapter 8).
4. Mailing Addresses — Lists the correct names and mailing addresses for all parties signing the voucher(s).
5. Parcel Number — Inserts official data for the parcel.

C. Acquisition Agent's Summary (back side of form)

1. Settlement — Places an "X" in the appropriate box to indicate whether the acquisition was "total" or "partial." Inserts the amount of the settlement before adjustments for salvage, performance bond, statutory evaluation allowance, etc. Inserts in the blanks provided: the right of way area, date of deed, amounts and dates of all offers. Gives any required explanations in Section C, "Remarks."
2. Occupancy — Places an "X" in the appropriate box to indicate whether the property being acquired by WSDOT was "occupied" or "unoccupied" on the date of the Initial Offer Letter.

Note: Property is "occupied" if persons are in residence, if it is being used as a part of a business or farm operation, or if it is being used for storage of personalty.

3. Certification — Inserts the agent's name, signs, and dates the certificate.
4. Remarks — Enters here any pertinent explanations, information, etc., including, if appropriate, the fact that the parcel had been previously turned in for condemnation.

6-8.2 Right of Way Parcel Package

In addition to the Right of Way Parcel Transmittal the remainder of the package is made up of the following attachments (as appropriate) in the order listed:

- A. Memo: Special Handling — Attaches the memo to the face of the acquisition transmittal form (see Section 6-8.3).
- B. Administrative Settlement — Attaches letter justifying any administrative settlement or makes appropriate diary entry (see Section 6-9).
- C. Diary of Right of Way Activities (Form RES-301) — Assures that the diary is complete and that it is signed and dated.
- D. An Executed Original Real Property Voucher(s).
- E. Executed IRS W-9 form
- F. Instrument(s) — Originals only required.
- G. Escrow Agreement (Form RES 337) — Includes the white, canary, and pink copies with the transmittal to Headquarters, completely filled out and signed.
- H. Memo: Construction Item — Includes the original and two copies of memo (Construction IOC) signed by the Region Administrator authorizing a special construction item (see Section 6-4.4).
- I. Offer Letter and Revisions — Assures that the delivery data is completed on all.
- J. Title Report — Assures that the title report and all supplemental reports are included, and are not older than six (6) months.
- K. Letter: Instrument Guarantee — Includes, if applicable, a letter from an interested party guaranteeing that a required instrument will be executed upon receipt of funds (usually Partial Satisfaction of Mortgage or Partial Reconveyance).
- L. Letter: Taxes — Includes, if applicable, (1) a letter from the mortgagee guaranteeing that the real estate taxes will be paid out of the reserves, or (2) a letter signed by the grantors and approved by the County Assessor requesting that the real estate tax lien be set over to the remainder of the property.
- M. Affidavits/Comments — Includes any necessary affidavits or documents.
- N. Miscellaneous Correspondence — Includes correspondence relating to the transaction. Assures that all correspondence from the grantor is included. Includes bills/receipts for statutory evaluation allowance, etc.
- O. Copy of the Relocation Eligibility Report (DOT Form 264-003).
- P. Copy of the Notice of Relocation Rights Letter.
- Q. Salvage Appraisal Report (DOT Form 263-003) — Accounts for salvage values.
- R. Fixtures and Improvements Agreement (Form RES-335) — Itemizes all fixtures and improvements acquired.
- S. Determination of Value (Form RES-214) or Administrative Offer Summary (Form RES-216) — Includes all DV's and AOS's.

6-8.3 Special Handling

6-8.3.1 General

- A. “Hardship” acquisitions are automatically given priority handling both in region and in Headquarters.
- B. All other cases receive normal routing unless an approved “Memo: Special Handling” is attached to the face of the Right of Way Parcel Transmittal.

6-8.3.2 Rules

Transactions are given “special handling” only in emergencies, such as:

- A. A threat of irreparable damage to the grantor in terms of monetary loss or burden.
- B. Extreme hardship.
- C. An urgent public relations problem where the state is correcting its own error.
- D. Tax payment.
- E. Ad date in jeopardy.

(Use Memorandum Format)

TO: Director, Real Estate Services

FROM: Right of Way Agent (Name)

SUBJECT: Special Handling
Project Title
FA _____
C.S. _____
Parcel Number _____

Please provide special handling for the above-reverenced parcel because:

(State the justification for special handling here.)

Recommended by:

Approved by:

Region Real Estate Services Manager Date

Director, Real Estate Services Date

Memo: Special Handling
Figure 6-8.3.3.2A

6-8.3.3 Procedures

6-8.3.3.1 “Hardship” Acquisition

All “hardship” acquisitions have already been authorized for special handling. Therefore, the Acquisition Agent stamps or writes in large red letters “Hardship” on the face of the Right of Way Parcel Transmittal to assure that the transmittal will receive “special handling.”

6-8.3.3.2 Memo: Special Handling

- A. In compliance with this section, the Acquisition Agent prepares a memo requesting that the transaction be given special handling (see Figure 6-8.3.3.2A).
- B. The Region RESM reviews the memo, and if approved, signs the memo in the space provided.
- C. The Acquisition Agent attaches the “Memo: Special Handling” to the face of the Right of Way Parcel Transmittal.

6-8.3.3.3 Priority of Files

- A. All “hardship” acquisitions and all transmittals with a signed “Memo: Special Handling” take precedence over any backlog of regular transmittals or condemnation reports in the region’s and Headquarters processing procedure.
- B. All personnel expedite the review of the transmittal and hand-carry the transmittal to the next station in the review process.

6-8.4 Region Processing

Region processing includes the following functions: title, property management, relocation assistance, appraisal, and accounting. The transmitting acquisition agent should not be responsible for any part of the region review of the transmittal, but makes certain all appropriate entries are made in computer.

6-8.4.1 Title Review

The Region RESM makes a detailed review of the entire data package, to assure that WSDOT will acquire an insurable title in the interest required. This review includes the following:

A. Instruments

Verification that all instruments needed to convey and/or clear title either have been executed or are provided for by the escrow instructions. Such verification includes the following items:

- 1. The project title is included in heading and at the first opportunity in the text (usually this will be in the legal description of the WSDOT’s acquisition) exactly as it is given on the approved Right of Way Plans. Subsequent references in the text of the instrument are to “said highway.” When applicable, the project title includes the pit or stockpile site number.
- 2. The county is named.
- 3. A valid consideration which is not in conflict with the actual amount to be paid is stated. (e.g., instrument should not show “10 dollars and other valuable considerations” when only \$5 cash is being paid.)
- 4. The names of the grantors agree with those given in the title report, and the signatures and acknowledgments conform exactly with the grantor clause.

- a. The marital status is stated (see Chapter 9).
 - b. If the grantor is a political subdivision or a corporation:
 - (1) The corporate name appears exactly as shown in the title report, the corporation is licensed to do business in the state of Washington and its license fees have been paid.
 - (2) The corporate seal, if required, agrees with the title report and grantor clause.
 - (3) The corporate form of acknowledgment is used, the signing officers are identified, and the data package contains a corporate resolution, if required.
 - (4) If a political subdivision or municipal corporation, the conveyance is in accordance with applicable statutes, and the data package contains an appropriate resolution.
 - (5) If a church, the bylaws permit the method of conveyance.
 - c. If the grantor is a partnership:
 - (1) All partners and their spouses have executed the instrument, unless evidence is provided which shows that certain partner(s) have the right to convey for the partnership.
 - (2) The conveyance conforms with applicable statutes.
 - d. If the signature and acknowledgment are by an attorney-in-fact, administrator, executor, or guardian, ascertains that the data package includes the authority for such signature and the proper acknowledgment.
5. The legal description of the grantor's property is given and the areas and interests conveyed conform to the approved Right of Way Plan.
6. In a partial acquisition:
- a. A check of the legal description of WSDOT's acquisition on the Right of Way Plan affirms that all of the right of way across the entire ownership has been included.
 - b. The access clause, if required, complies with the access requirements of the Right of Way Plan. If not, check that the data package contains the Region Administrator's approval of the change in the Access Plan and that an appropriate map revision has been requested.
 - c. Clauses for any special construction items (e.g., road approach, right of entry to construct, if required) shown on the Right of Way Plan have been included. Also check that the data package includes construction item memos and, in the case of construction items not on the Right of Way Plan, that these memos have been approved by the Region Administrator. Also, verify that the special consideration is shown on the principal Real Property Voucher.
 - d. The area given in the specific details clause is identical to that shown on the Right of Way Plan, the reviewing Appraiser's Determination of Value, and the principal Real Property Voucher. Also, check that the most recent revision of the Right of Way Plan is included in the specific details clause.

7. The occupancy and any other necessary clauses (e.g., straddle, moving improvements) have been included. Also, check that the principal Real Property Voucher incorporates the effects of any of these special clauses. If fixtures or improvements are involved, also check that the data package includes a Fixtures and Improvements Agreement.
8. The parcel number is shown on the lower right corner of each page of the instruments.
9. In the acknowledgment:
 - a. The date is the same as or later than the date of execution.
 - b. The county (and state) in which the instrument was executed is named.
 - c. The acknowledging official has signed and sealed the acknowledgment, his commission has not expired, and his place of residence and commission expiration date are shown.
- B. Escrow — If the transaction is to be escrowed, checks to assure that the Escrow Agreement (Form RES-337) has been prepared in accordance with Chapter 8.
- C. Vouchers — Reviews all real property vouchers to assure that they have been prepared and executed in accordance with Chapter 10.
- D. Data Package — Reviews the data package to verify that:
 1. All needed department forms (and the proper number of copies of each) have been included in the data package.
 2. If improvements or fixtures are involved in the transaction: that the data package includes a Fixtures and Improvements Agreement.
 3. The Encumbrance Report on the Right of Way Acquisition Transmittal, includes all encumbrances shown on the title report and all supplementals, and that they have been cleared or provided for in the Escrow Agreement. (If the acquisition is not for highway purpose, the agent needs to clear all encumbrances including utilities as the Utilities Engineer will not be clearing any easements.)
 4. The items included in the data package are in the order required.
- E. Actions — The Region RESM takes the following actions:
 1. If additions or corrections to the data package must be made: returns the data package to the Acquisition Agent explaining the problem and recommending a solution.
 2. If the transaction is complete and correct:
 - a. Posts the acquisition to the appropriate Right of Way or Sundry Site Plan.
 - b. Delivers the acquisition data package to the next region review station.

6-8.4.2 Property Management Review

The procedures for property management review of the acquisition data package are given in Chapter 11.

6-8.4.3 Relocation Assistance Review

The procedures for relocation assistance review of the acquisition data package are given in Chapter 12.

6-8.4.4 Appraisal Unit Review

The procedures for the appraisal unit review of the acquisition data package are given in Chapter 4.

6-8.4.5 Computer Tracking System

The Region RESM verifies that all previous computer entries are accurate and completes entries for: the date the owner signed; the amount of compensation; the type and date of administrative settlement, if any; the date the parcel is transmitted to Headquarters — “To Right of Way Approval.”

6-8.4.6 Final Region Review

Upon completion of all other steps in the region review process, the acquisition data package is reviewed by the Region RESM. If satisfactory:

- A. Signs and dates the region action block of the Right of Way Parcel Transmittal.
- B. Assures that one copy of the Real Property Voucher (DOT Form 262-039) is placed in the region parcel file.
- C. Transmits construction memo(s) to the appropriate Project Engineer.
- D. Transmits the acquisition data package to the DRES.

6-8.5 Headquarters Processing

- A. All acquisition transmittals are date-stamped by the Mail Clerk and are submitted to the Title and Condemnation Program Manager for entry into computer and to check TRAINS voucher for coding and make corrections as needed.
- B. All acquisition transactions are routed as follows:
 - 1. To the Project Coordinator for notation of receipt.
 - 2. To the Assistant Director Title and Condemnation Program who:
 - a. Assures that good and sufficient title has been acquired by the state. Instruments are processed only if an approved map is on file. If the instrument does not agree with the approved plan, the instrument is placed in a “hold” status until an approved plan revision is received or the instrument is corrected to agree with the current approved plan.
 - b. Posts the acquisition on the appropriate Right of Way or Sundry Site Plan using the color codes specified in Figure 6-8.5B2b. If the parcel had been previously submitted for condemnation action, prepares and dispatches to the Attorney General’s Office, Memo: Stop Condemnation Request (Form RES-319).
 - c. Prepares the Closing Order Worksheet. If appropriate, prepares the Escrow Transmittal Letter (Figure 6-8.5B2c), for signature of the Title and Condemnation Program Manager.
 - d. Obtains signature of DRES.

Fee Instruments Warranty Deed Special Warranty Deed Quitclaim Deed (conveying fee title) Judgment and Decree of Appropriation	Red	Solid (Unbroken) line enclosing the area conveyed.
Easements Leases	Blue	Solid line enclosing the area conveyed (on blue prints, use <i>yellow</i>).
Quitclaim Deed (not conveying fee title) Release of Damages Possession and Use Agreement Order Ajud. Possession and Use Compensation Agreements Federal Declaration of Taking Permits	Red	Dashed (broken) line enclosing the area involved. (Change to solid line where final documents conveying fee title have been processed.)
Limited Access	Yellow	Solid line across the parcel at the limited access line.
Road Approach	Red	Shown as R/A at the point where access is permitted.
Contracts for Sale of State-owned Lands	Blue	Hachures across the tract (on blue prints, use <i>yellow</i>).
Conveyances of State-owned Lands	Blue	Shade in the entire area (on blue prints, use <i>yellow</i>).

Real Estate Services Acquisition Color Codes
Figure 6-8.5B2b

- e. In escrow cases:
 - (1) Executes the Escrow Transmittal Letter and dispatches it, along with the Real Property Voucher, the TRAINS voucher and other required attachments to the Headquarters accounting office for processing of warrant.
 - (2) Escrow package and mails to title insurance company (escrow agent).
 - (3) Receives closing statement from the title insurance company, and dispatches appropriate letter to grantor verifying the state's possession date.
 - (4) Transmits closing documents to title company.
 - (5) When notified by the title company of recording and compliance with closing instructions, requests warrant from accounting.
 - (6) When warrant is received, mails (Certified Mail) warrant and payment letter.
- f. In non-escrow cases:
 - (1) Transmits closing orders and instruments to title insurance company that prepared the title report.
 - (2) Upon receipt of notice of clear title from the title insurance company, prepares appropriate letter to the grantor transmitting warrant and verifying WSDOT's possession date. Dispatches letter, the two Headquarters copies of the Real Property Voucher, and other required attachments to the Headquarters accounting office for final processing and payment.
- g. In the case of transmittals originating with the Attorney General (AG) (OIPU, J & D, etc):
 - (1) Prepares a warrant request, including request for special handling, and transmits it, the original and three copies, of the Real Property Voucher, and any secondary vouchers with supporting documentation, Determination of Value, and AG closing report (J&D's only) to the Headquarters accounting office for processing and payment.
 - (2) Upon receipt of warrant causes same to be hand carried to the AG section. Upon receipt of copy of AG dispatch letter to the court, prepares appropriate letter to condemnee advising of WSDOT's right of occupancy date.
 - (3) Transmits closing order to title insurance company that prepared the title report.
- h. In all cases:
 - (1) Enters the closing order date into computer.
 - (2) Upon receipt of the WSDOT's copy of the closing order from the title insurance company indicating compliance with the state's instructions, enters date of receipt in Headquarters as clear title date into computer.

6-9 Administrative Settlement

6-9.1 General

If it is impossible to reach an agreement to purchase based upon just compensation, WSDOT:

- A. Attempts acquisition by means of an administrative settlement.
- B. Files condemnation proceedings (see Sections 6-10 and 6-11).

6-9.2 Rules

- A. The Region RESM reviews the state of acquisitions on the project before permitting the acquisition of a parcel for an amount in excess of that given on the Determination of Value (Form RES-214) or Administrative Offer Summary (Form RES-216). Authorization to proceed with an administrative settlement is given only when it has been determined that such action will not unduly jeopardize the remaining acquisition on the project.
- B. In each case, the effect of an administrative settlement upon the amount entitlement under the relocation assistance program is considered.

6-9.2.1 Authority

The authority to approve administrative settlements on parcels being acquired by the departments is as follows:

- 1. Unlimited settlement authority is delegated to each Regional Administrator. This authority may be further delegated. The Region is responsible for documenting any further delegation and providing evidence of that delegation to Headquarters.
- 2. Each settlement must be supported by adequate documentation and justification for Headquarters and for Accounting.
 - a. A diary entry signed by the approving party is sufficient documentation when the settlement is \$50,000 or less.
 - b. A memorandum to the file, signed by the appropriate authority or authorities, must be provided to support settlements that exceed \$50,000.

6-9.3 Procedures

6-9.3.1 Region Actions

- A. The Acquisition Agent:
 - 1. Makes every sincere effort to negotiate a purchase for the just compensation as listed in the Determination of Value or Administrative Offer Summary. This must at least meet the minimum negotiation requirements given in Section 6-10.
 - 2. If all efforts to negotiate a settlement at the just compensation fail, discusses the parcel (especially: offers, owner demands, counteroffers, etc.) with the Region RESM.
- B. The Region RESM:
 - 1. Reviews the Diary of Right of Way Activities — Acquisition and weighs all factors affecting the parcel, including:
 - a. Basis for owner's refusal of the WSDOT's offer.
 - b. Owner's counteroffers, etc.
 - c. Status of negotiations on the project, including negotiation cut-off date.
 - d. Costs of condemnation.
 - e. Effects upon relocation assistance program entitlements.
 - f. All available appraisals, including the owner's appraisal, if any. Note that where an administrative settlement is made for cost to cure items (that were not addressed in the original AOS) and would put the parcel over the \$10,000 threshold for appraisal waiver, an appraisal is required.
 - g. Other pertinent factors, such as anticipated trial testimony, claim for evaluation allowance, etc.

(Use Memorandum Format)

TO: Regional Administrator

FROM: Region Real Estate Services Manager

SUBJECT: Administrative Settlement
(Project Title)
FA
CS Job Number
Parcel Number Owner (surname)
Right of Way Plan Sheet ____ of ____ Sheets

Amount of Approved Determination of Value (DV) \$ ____.

Amount of Proposed Administrative Settlement \$ ____.

Amount of Proposed Total Settlement \$ ____.

(This letter should contain all information needed for the settlement decision. Here are topics that should be addressed, please adjust to fit circumstances.)

1. Description of the property, take, damages, the offer:

Describe what is happening to this property. What is the impact of the acquisition on the property, how has the offer addressed damages, and what is the property going to look like after the project.

2. Brief summary of the basis for the owner's refusal of the state's offer.

Why isn't our offer acceptable? Be specific about what the problem is. What comparables are the owner using, appraisals that have been done, cost estimates provided, concerns about damages, etc.

3. Counteroffers and negotiations relative thereto (a copy of the diary may be sufficient).

Discuss engineering changes, conferences with the property owner, all counter offers, how committed to this settlement is the property owner.

4. Condemnation will take additional time and money, i.e., updating for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness fees (appraisers, consultants, etc.).

5. Trial risks based on experience in the particular county.

What is the trial history in this County? Explain any recommendation made by the AAG.

6. Anticipated range of testimony on behalf of the property owner.

What can the AAG expect from the property owner and/or witnesses at trial.

Memo: Administrative Settlement (page 1 of 2)
Figure 6-9.3.1B3

7. Explanation of the effect of the proposed settlement of any Relocation Assistance program entitlements and on any other parcel(s).

8. Detailed explanation of the justification for the administrative settlement.

Why is this settlement justified without impugning the appraisal, engineering, etc? For example, 'the appraisal was performed 6 months ago and the market values in this area are accelerating at 1% per month' is acceptable but 'the appraisal was too low' or 'another appraiser would arrive at a different value' is not acceptable. If there will be construction savings, talk about it here.

9. Any other pertinent information and comments.

Talk about impending Ad date, last holdout on the project, construction savings - anything you feel is pertinent that you didn't discuss above. Also, if you have a tentative agreement with the owner, that should be stated here.

Recommended By:

Region Real Estate Services Manager

Approved By:

Regional Administrator

Memo: Administrative Settlement (page 2of2)
Figure 6-9.3.1B3

2. May instruct the Acquisition Agent either:
 - a. To submit the parcel for condemnation.
 - b. Negotiate a settlement in accordance with Section 6-9.2.
 3. If the administrative settlement is to be for an amount greater than that authorized to the Region RESM by this section, prepares the “Memo: Administrative Settlement” (see Figure 6-9.3.1B3), and transmits it to the Regional Administrator or delegate for approval. The memo explains the rationale for settlement to an extent consistent with the circumstances and need, the amount of money involved, and is retained as a permanent document in the file.
 4. Upon receipt of the approved administrative settlement memo, transmits it to the Acquisition Agent for inclusion with the Right of Way Acquisition Transmittal, with instruction to negotiate an administrative settlement.
 5. Without approval for an administrative settlement, instructs the Acquisition Agent to submit a Negotiator’s Report for Condemnation.
- C. The Acquisition Agent:
1. If instructed to condemn, proceeds as described in Sections 6-10 and 6-11.
 2. If instructed to negotiate an administrative settlement:
 - a. Notes the authorization to proceed in the Diary of Right of Way Activities and, if the administrative settlement is within the appropriate limits, obtains the signature of the appropriate authority on this diary notation.
 - b. Makes an oral offer to the owners to settle for the amount of the just compensation plus the administrative settlement. Assures that the owners are aware of the effects that an administrative settlement may have upon the amount of relocation assistance entitlement and notifies the Relocation Agent.

Note: No written offer letter is presented on an administrative settlement.

 - c. If the owners accept the administrative settlement, prepares and obtains execution of the necessary instruments, vouchers, etc., as in a normal closing. Then prepares the Right of Way Parcel Transmittal and its accompanying data package as described in Section 6-8.
 - d. If the owners refuse the administrative settlement, prepares the Negotiator’s Report and its accompanying data package as described in Sections 6-10 and 6-11.

6-10 Condemnation, State

6-10.1 General

When title to private property, or property rights, needed for transportation purposes cannot be acquired by negotiation, the state exercises its power of eminent domain and acquires or clears the interests of all private parties by condemnation action.

The probable necessity to condemn is determined by the Region RESM when efforts to obtain a settlement with the owner have not been successful, or title cannot be conveyed to the state. The condemnation action is begun by submitting a Negotiator’s Report (Form RES-320) to the Assistant DRES for review as to adequacy of negotiations and other data. If appropriate, parcels are submitted to the Attorney General, Transportation Division for court action. Upon referral of

a case to the Attorney General, all offers made by the state during negotiations are withdrawn. The Attorney General then assumes full responsibility for all aspects of the acquisition, except that settlements negotiated by the Assistant Attorney General must be coordinated with and approved by the DRES.

6-10.2 Rules

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- A. The final judgment of the court is that WSDOT cannot acquire the real property by condemnation; or
- B. The condemnation proceeding is abandoned by WSDOT other than under an agreed-upon settlement; or
- C. The court having jurisdiction renders a judgment in favor of the owner at least 10 percent higher than the state's 30 day offer.

6-10.2.1 In-State Owners

- A. No parcel may be submitted for condemnation until the Acquisition Agent has met with the owner or owner's designee and discussed WSDOT's offer at least three times (including the meeting during which the Initial Offer Letter is presented).

Note: Telephone calls to set up an appointment do not count as a meeting unless the owner refuses to grant an appointment and instructs the Acquisition Agent to submit the parcel for condemnation.

- B. If it is impossible to make WSDOT's offer in person because the owner refuses to grant any appointments, the Acquisition Agent proceeds in the same manner as dealing with an out-of-state owner, except that a paragraph is adopted to the offer letter requesting an appointment and a chance to explain the state's offer in detail.

6-10.2.2 Out-of-State Owners

If it becomes necessary to condemn a parcel that belongs to an out-of-state owner, the Acquisition Agent sends the "Condemnation Notice" letter (see Section 6-3.) not later than the date on which the Negotiator's Report is prepared.

6-10.2.3 Exceptions

The Acquisition Agent may deviate from the rules in Section 6-10 under the following circumstances:

- A. The owner (owner's attorney) rejects the state's offer and instructs the Acquisition Agent to submit the parcel for condemnation.
- B. The owner is abusive and/or orders the Acquisition Agent to "get out."

6-10.2.4 Pre-Condemnation Agreements

- A. Possession and Use Agreement. If, at the conclusion of negotiations, the only remaining issue is the amount of the just compensation, the Acquisition Agent attempts to obtain a Possession and Use Agreement (Form RES-317) from the owners if so directed by the Region RESM.

- B. Compensation Agreement for Condemnation (Form RES-318). This instrument is for use in those circumstances where the property owner is in agreement with the state's offer of compensation, but is faced with title complications which make it impossible to convey good title, or for the Acquisition Agent to perfect the title through clearance of encumbrances. If the agreement is executed by the person or persons who appear to have the paramount claim to the property, the state will be safe in entering upon the property under the terms of the right of immediate entry contained in the agreement, even prior to the actual clearing of the title encumbrances or the entry of the judgment and decree.
- C. Compensation Agreement for Condemnation shall be secured by the Acquisition Agent only at the request of the Region RESM who shall make his decision (1) upon the same criteria as to time set forth in A above and (2) consultation with the Title and Condemnation Program Manager.
- D. If either of the above forms is sought and executed, it will be forwarded to Headquarters as a separate transmittal. The Negotiator's Report will be a separate transmittal which is to include a copy of the Possession and Use Agreement or Compensation Agreement and voucher(s) for the information of the Assistant Attorney General assigned to the case.

6-10.3 Procedures

6-10.3.1 Region Processing

- A. If it becomes necessary to submit a parcel for condemnation, the Acquisition Agent:
 - 1. When so instructed by the Region RESM, determines whether the owners will sign a Possession and Use Agreement or a Compensation Agreement for Condemnation as appropriate to the case.
 - a. If so, prepares and obtains execution of the appropriate agreement, a Real Property Voucher, if appropriate, and all other documents normal to the acquisition.
 - b. If not, notes the refusal to sign the agreement in the Diary of Right of Way Activities — Acquisition.
 - 2. Completes the Negotiator's Report according to the instructions thereon.
 - a. If operating under the critical project deviation procedure and if the owner does not accept the state's offer at the meeting at which the Initial Offer Letter is presented:
 - (1) Avoids taking any coercive action by simultaneously:
 - (a) Continuing the negotiations to meet the minimum requirements without notifying the owner of the critical project deviation procedure.
 - (b) Preparing and submitting the Negotiator's Report, but reserving additional negotiating time by inserting in the remarks section of the report: "Under the critical project deviation procedure, negotiations will continue until _____."
 - (2) If the subsequent negotiations are successful, submits a supplemental Right of Way Acquisition Transmittal as specified in Section 6-8.
 - (3) If the subsequent negotiations are unsuccessful, submits a supplemental Condemnation Report at the end of the additional time.
 - b. If dealing with an out-of-state owner, mails the "Condemnation Notice" (see Section 6-3) not later than the date of the Negotiator's Report.

- c. If the parcel is "Registered Land" (see Section 6-5), notes that fact in the remarks section of the report.
3. Assembles the data package required for the condemnation transmittal. This data package includes at least the following in the order listed:
3 copies (original plus 2 copies):
 - a. Negotiator's Report
 - b. The Agent's Diary of Right of Way Activities.
 - c. Title report and supplementals including instruments shown in title report under special exceptions. Title report must be updated to within 30 days of transmittal to Headquarters.
 - d. Approved DV's or AOS's and all updates.2 copies (original plus 1 copy):
 - a. Correspondence (offer letter, letters, e-mails, memorandums). In order from most recent to oldest.1 copy:
 - a. Right of Way plan sheets (full or half size) showing area or interest to be acquired.
 - b. Proposed Real Property Voucher
 - c. Copy of latest appraisal with pictures (color, if available)

Please e-mail one copy of the proposed deed, easement, etc. to Headquarters Condemnation Title Examiner.

4. Submits the Negotiator's Report and its accompanying data package as listed above to the Region RESM.
- B. The Region RESM:
1. Contacts the owner (or owner's attorney) and attempts to negotiate a settlement. Takes every care to avoid any charge of coercion (see Section 6-1).
 - a. Completes a Diary of Right of Way Activities — Acquisition indicating the results of this contact.
 - b. If a settlement is arranged, converts the data package to an Acquisition Transmittal by following the procedures given in Section 6-8.
 - c. If it is not possible to arrange a settlement, adds the diary (a above) to the condemnation data package, and notes the addition in the "remarks" section of the Condemnation Report.
 2. Coordinates with the Region Administrator to determine the exact procedures and routing for the region review of the Condemnation Report and its accompanying data package. As a minimum, the region processing includes: title, appraisal, and computer system. The Acquisition Agent should not be responsible for any part of the region review.

6-10.3.1.1 Title Review

The Region RESM adapts the procedures given in Section 6-8 to make a detailed review of the data package.

6-10.3.1.2 Computer Tracking System

The Region RESM inputs condemnation data into the computer tracking system.

6-10.3.1.3 Final Region Review

Upon completion of all other steps in the region review process, the condemnation data package is reviewed by the Region RESM. Upon concurrence, he signs and dates in the region action block of the Negotiator's Report, and transmits the data package to Headquarters.

6-10.3.2 Headquarters Processing

- A. The Assistant Director Title and Condemnation Program:
 1. Inputs appropriate data into the computer tracking system.
 2. Transmits the condemnation data package to the Assistant DRES.
- B. The Deputy DRES reviews the Negotiator's Report and its accompanying data package to determine whether adequate efforts to obtain a settlement were made.
 1. If not, returns the package to the region for further negotiation.
 2. If appropriate, returns the condemnation transmittal to the Assistant Director Title and Condemnation Program for processing.
 3. If the transmittal is a "hardship" or "protective buying" condemnation, weighs all factors (e.g., nature of the hardship, state's construction schedule, etc.) and recommends to the DRES whether to proceed to immediate condemnation or to let the case await the normal acquisition schedule.
- C. The DRES reviews the recommendations of the Deputy DRES, and upon concurrence, coordinates with the Region RESM:
 1. If they agree on the necessity for further attempts at a negotiated or an administrative settlement, returns the file to region for action.
 2. If they do not agree on the necessity for further action and/or if the parcel is a "hardship" or "protective buying" case, convenes the Administrative Review Board by conference call for its decision. Action is taken in accordance with the Administrative Review Board's decision. The DRES documents the results of the board meeting, and provides a copy to the Region RESM.
 3. If the decision on a "hardship" or "protective buying" condemnation is to await the normal acquisition schedule, the DRES sends a letter to the owner advising of the decision, and directs a copy of the letter to the Region RESM.
- D. The Assistant Director Title and Condemnation Program:
 1. Reviews each transmittal that has been approved for condemnation processing to assure that all departmental and federal negotiation requirements have been met.
 2. Prepares exhibit maps by color coding five copies of the approved Right of Way Plan to show the total before ownership and the interest (e.g., fee, easement, etc.) to be acquired. All copies are certified for use as court exhibits.
 3. Checks the legal description given in the title report for the "before" ownership against the Right of Way Plan to ensure conformance.
 4. Prepares a legal description of the interest to be acquired.

5. Prepares a list of all parties in interest (including: names, addresses, and instructions as to where the parties may be located for legal service). The prime source of this information is the Negotiator's Report; however, other sources (e.g., the Acquisition Agent, title report, data from adjacent parcels, etc.) are used as required.
6. Coordinates with the Assistant Attorney General as needed to determine recommendations on the makeup of blanket condemnations.
7. Groups the parcels for filing of one or more blanket condemnation actions.
8. Prepares a data package for each parcel being condemned including:
 - a. Exhibit maps.
 - b. Title reports.
 - c. Legal description(s).
 - d. List of parties in interest as defined in 5 above.
 - e. Appraisal reports.
 - f. Determination(s) of value.
 - g. The remainder of the Negotiating Agent's data package forwarded with the Negotiator's Report.
 - h. Where limited access is involved:
 - (1) Copy of Resolution by Transportation Commission, and
 - (2) Certificate for Findings and Order.
 - i. A cover letter to the Attorney General's division requesting that the required interests be acquired by legal action. A single cover letter is used to forward all parcels grouped into a blanket condemnation pursuant to 7 above.
9. Makes the following distribution of the data packages:
 - a. Attorney General, Transportation Division.
 - b. Region Administrator.
 - c. Headquarters parcel file.
10. Examines all Right of Way Plan revisions and supplemental title reports to determine their effects, if any, on any pending condemnation case. As a result, supplies the Attorney General, Transportation Division, with corrected descriptions, maps, lists of interested parties, etc.
11. Upon receipt of the Memo: Stop Condemnation Request (Form RES-319) (see Section 6-8) and upon confirming that an appropriate settlement has been obtained, sends a letter to the Attorney General, Transportation Division, requesting that the parcel be deleted from the condemnation action.

6-10.3.3 Attorney General's Processing

The Assistant Attorney General who is assigned to act as the trial attorney:

- A. Prepares pleadings.
- B. Files the action in the superior court for the county in which the property is located, and secures a hearing date for obtaining the Order Adjudicating Public Use (OAPU).
- C. Files the Lis Pendens with the County Auditor for said county.

- D. Obtains the OAPU and secures a trial date.
- E. In preparing the case, may obtain the services of additional or alternate expert witnesses and/or specialists by contracting for the needed services.
- F. Holds a pretrial conference.
- G. May continue action to effect settlement from date of assignment to case.
 - 1. If, during the preparation of the case for trial, whether before or after filing, the trial attorney and the attorneys for the condemnee reach a basis for settlement which is greater than the reviewing appraiser's Determination of Value, the trial attorney coordinates with the Chief Counsel, Transportation Division, and the DRES for the required approvals.
 - 2. If the basis for settlement is reached during the trial of the case, the trial attorney may secure the necessary approval by telephone during a recess by obtaining the approval of the DRES or the Deputy DRES.
 - 3. In either case (1 or 2 above) the trial attorney may obtain possession and use under appropriate circumstances. If possession and use by WSDOT is desired and can be had by offers of payment into court, the trial attorney must obtain the same approvals indicated in 1 and 2 above if the amount to be paid exceeds the Review Appraiser's Determination of Value.
 - 4. Having reached an approved basis of settlement in any case (1, 2, or 3 above) the trial attorney enters into an appropriate stipulation with opposing counsel for presentation to the court.
- H. Depending upon the form of approved settlement, if any, that is secured pursuant to G above, takes action as follows:
 - 1. Acquires the required interest by a Stipulated Judgment and Decree of Appropriation and complies with paragraph L below.
 - 2. If the condemnee wishes to settle by deed rather than judgment, sends a memo to the appropriate Region RESM requesting the region conclude a settlement by deed and voucher. Such memo should include an explanation of the amount above the determination of value and who approved same.
 - 3. Sends to the DRES conformed copies of the Stipulated Order of Immediate Possession and Use, copies of the Certificate of Immediate Possession in Condemnation (Trial Attorney's Certificate) and the AG Memo: Transmittal — P&U and Request for Warrant. If the stipulated amount varies from the DV, submits a signed memo explaining the circumstances.
- I. If no agreement can be reached, proceeds with trial of the case and acquires the required interest by either a court or jury Judgment and Decree of Appropriation (J&D).
- J. If an adverse verdict is received, submits recommendations for appeal to the Chief Counsel, Transportation Division, then pursues the appeal, if so directed.
- K. If WSDOT does not appeal, causes the J&D to be entered.
- L. Sends to the DRES five conformed copies of the J&D, and two copies of the Trial Attorney's Certificate, the Trial Attorney's closing report, and the AG Memo: Transmittal — J&D and Request for Warrant. If the J&D was reached by stipulation pursuant to Paragraph H-1 above, the closing report includes a statement of the circumstances regarding the amount in excess of the Determination of Value and the fact of approval and by whom approved.

Acquisition

- M. If in any of the cases stated above, attorney's fees are payable in addition to the settlement, the Attorney General will initiate a voucher and warrant request to cover same and forward the voucher, warrant request and any necessary affidavits to the Accounting Division.
- N. Assures that pertinent data is concurrently input into computer.

6-10.3.4 Closing

- A. The Assistant Director Title and Condemnation Program:
 - 1. Assures that:
 - a. All interested parties have been named, appeared, and/or defaulted.
 - b. The proper legal description was used.
 - c. All necessary documents were received.
 - d. All pertinent data is entered into computer.
 - 2. Prepares and signs a Real Property Voucher made payable to the Clerk of the appropriate court in the amount of the Trial Attorney's Certificate.
 - 3. Transmits the Real Property Voucher to the Headquarters accounting office.
 - 4. Distributes copies of the Stipulated P&U or the J&D, and the closing report as follows:
 - a. Plans Engineer.
 - b. Region RESM.
 - c. Negotiation files.
 - d. Right of Way parcel file (with two copies of the closing report).
 - 5. Prepares and transmits the acquisition data package for normal Headquarters processing (see Section 6-8) using the Negotiator's Report (Form RES-320).

6-11 Condemnation, Federal

6-11.1 Rules

- A. Condemnation proceedings in federal court system are used:
 - 1. Only on interstate and defense access highway projects.
 - 2. Only when the property owner has refused the state's request for immediate possession and use.
 - 3. Only when the Attorney General, Transportation Division, advises the Region RESM that the superior court calendar for the appropriate county precludes acquisition of the required right of way in time to meet the construction ad date.
- B. All of the rules and procedures of Sections 6-10.2 (except 6-10.2.4), 6-10.3.1, and 6-10.3.2 are followed.

6-11.2 Procedures

6-11.2.1 Region Procedures

The Region RESM:

- A. Prepares a letter for the signature of the Region Administrator explaining the situation and requesting the Secretary of Transportation's authorization to proceed to federal court.

- B. Prepares and transmits the Negotiator's Report according to the instructions thereon.
- C. Coordinates with the U.S. Region Attorney on all matters concerning the proceeding.

6-11.2.2 Headquarters Procedures

The Assistant Director, Title and Condemnation Program:

- A. Coordinates with the Project Engineer to obtain accurate exhibit maps as required for the federal court. The federal court requirements include:
 - 1. Color-coded Right of Way Plan sheet(s) for each parcel.
 - 2. Legend on each sheet (as to meaning of symbols employed).
 - 3. Parcel number within the right of way boundaries.
 - 4. A known monument shown on each sheet.
 - 5. Metes and bounds delineation of the part taken expressed completely on the face of the plan.
 - 6. Vicinity map on each sheet showing entire ownership.
 - 7. Distances expressed in hundredths of a foot (or meters if plan is metric).
 - 8. Areas expressed in thousands of an acre (or hectares if plan is metric).
 - 9. Deputy Secretary's signature and seal.
- B. Prepares a legal description of the acquisition that agrees with the delineation on the exhibit map.
- C. Coordinates with the FHWA to obtain their preliminary approval of the state's:
 - 1. Exhibit maps.
 - 2. Legal description.
 - 3. Appraisals.
- D. Submits legal description and orders federal form title insurance reports from the title insurance company — the amount of the insurance being the amount of the FHWA-approved preliminary appraisal.
- E. Coordinates with Photogrammetry to obtain aerial photographs of the area involved as close to the date of the Declaration of Taking as the weather permits.
- F. Coordinates with the U.S. Region Attorney as needed to obtain additional appraisals, plans etc. Assures compliance with the requirements of Section 1-22.
- G. Prepares, coordinates and submits through channels a data package containing:
 - 1. A letter to the U.S. Department of Transportation signed by the Secretary of Transportation including:
 - a. The justification for the federal acquisition of the lands or interests in lands.
 - b. The date FHWA authorized WSDOT to commence right of way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by Sections 108(a), 108(b), and 111 of Title 23, U.S.C.
 - c. The necessity for acquisition of the particular lands under request.

- d. A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access.
 - e. WSDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition.
 - f. A statement on compliance with the provisions of 23 CFR Part 771 relating to environmental concerns.
 - g. Adequate legal descriptions, plats, appraisals, and title data.
 - h. An outline of the negotiations which have been conducted by the agency with landowners.
 - i. An agreement that WSDOT will pay its pro rata share of costs.
 - j. A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and amendments thereto.
2. A letter to the FHWA Division Engineer signed by the DRES transmitting the following:
- a. Transmittal letter to the Federal Director.
 - b. Title page, for each blanket or single case.
 - c. The following items for each parcel:
 - (1) Negotiator's reports.
 - (2) Diary of Right of Way Activities.
 - (3) Exhibit maps (10 copies).
 - (4) Legal description (10 copies).
 - (5) Appraisal reports and DV's (five copies).
 - (6) Federal form title certificates (five copies).
 - (7) Schedule "A" showing:
 - (a) Parcel number.
 - (b) Owners.
 - (c) Owner's addresses.
 - (d) Estimated just compensation.
 - (e) Legal description.
 - (8) Scheduled ad date.
 - (9) Statement of the state's inability to acquire in state court in time for contract advertising.
 - (10) Statement of access control.
- Note:** Extra copies of the data package are prepared in case of eventual need.
- H. Checks and accepts the deed(s) from the USA to the state. Each deed is processed for posting and recordation as specified in Section 6-8.

6-12 Authorization of Acquisition

6-12.1 General

The following sections outline the requirements which must be met before acquisition of real property required for transportation purposes can be accomplished. The requirements listed are the end-products of many procedures covered elsewhere in the manual and other departmental and federal publications which can be assumed to have been properly accomplished in producing the end-products (Ref: Chapter 1). Where special procedures are required because of the nature of the acquisition, specific details that vary from the norm are set forth.

6-12.1.1 Rules

The following end-products are required before acquisition of real property needed for transportation purposes is authorized:

- A. Approved Right of Way Plan which may vary in name depending upon the scope of the authorized work.
- B. Work Order Accounting Plan which states the scope of the authorized work, and provides information concerning funds with which to pay for the work.

Note: The type/name of right of way map referred to in Rule A and the scope of work authorized by the Work Order Accounting Plan (Rule B) are generally linked together as “phases” in accordance with Figure 6-12.1.1B.

6-12.1.2 Normal Acquisition Procedures

- A. Having received the end-products referred to above, the Region RESM is authorized to proceed with the specified acquisitions (or appraisals) of the right of way in accordance with the provisions of this chapter and Chapter 4 using available staff.
- B. No offer to acquire any parcel may be made until an approved Determination of Value (DV) or administrative offer is available to the Acquisition Agent.

6-12.2 Acquisition in Advance of NEPA Clearance

There are four circumstances under which right of way can be acquired in advance of NEPA clearance:

- 1. The state may use its own funds to purchase right of way prior to NEPA clearance and may apply the purchase price (or if donated, the fair market value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). They cannot be reimbursed for these costs, however.

When the project is funded and credit is sought, the state must certify to FHWA that the property:

- a. Was lawfully obtained.
- b. Was incorporated into the project.
- c. Was not 4(F).
- d. Did not influence the selection of an alternative.

Evidence must be provided to support the current fair market value of the property (appraisal or A.O.S., etc.) or in exceptional circumstances and with approval of FHWA, the original purchase price of the property (closing statements, etc.).

Phase #	Map Type/Name	Work Authorized
1	Access Report Plan	Appraisal of total takes no acquisition.
2	Access Hearing Plan (w/o complete R/W info)	Appraisal of partial takes where necessary data is available to appraiser although not on plan. Acquisition of total takes no appraisals in controversial areas subject to change at hearing.*
2A	Access Hearing Plan (w/complete R/W info)	All appraisals.* All acquisitions.* No appraisals or acquisitions in controversial areas subject to change at hearing. No appraisal or <u>acquisition</u> of partial takes if federal design hearing requirements are incomplete.*
3	Findings and Order Plan (w/o complete R/W info)	<u>Same</u> as Phase 2.
4	Final Right of Way Play	All appraisals.* All acquisitions.*

*If appeal period not completed, delay action in areas of controversy and possible appeal.

Outline of Acquisition Phases
Figure 6-12.1.1B

2. The state may use its own funds to purchase right of way prior to NEPA clearance and be reimbursed. However, they must meet the very stringent requirements of 23 U.S.C. 108(c)(2)(c&d), as explained in 23 CFR 710.501(c). This option (which requires the Governor's and EPA's sign-offs) will be seldom used.
3. The state may purchase right of way prior to NEPA clearance under the protective buying and hardship acquisition provisions, as per 23 CFR 710.503, and be reimbursed. Note, however, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.
4. The state may purchase right of way prior to NEPA clearance under the corridor preservation provisions of 23 CFR 630.106(3)&(4) and be reimbursed. This process is similar to the process for protective buying (see 3 above). Generally, this is only done for parcels, which will not require any displacement. Note, however, that as with hardship and protective buying, these purchases are in advance of formal NEPA clearance of the project and individual clearance via a Categorical Exclusion is required.

In order to maintain eligibility for federal aid reimbursement, all requests for hardship, protective purchase, and/or corridor preservation must be routed through the DRES for FHWA approval.

6-12.3 Advance Acquisition With State Advance Acquisition Revolving Fund

A project may be acquired by these advance acquisition procedures when it is deemed beneficial to the state to do so (Ref: WSDOT Publication D 26-40 and Section 6-12.3 for "hardship" acquisition.)

6-12.3.1 Rules

1. An Advance Right of Way Acquisition Committee established to review, evaluate, and prioritize, properties recommended for acquisition through the state Advance Acquisition Revolving Fund shall consist of:
 - a. Director, Real Estate Services (Chair)
 - b. State Design Engineer
 - c. Director of Program Management
 - d. One Region Administrator chosen in the following manner:
Any proposal submitted by a Region Administrator from an Eastern Washington region shall be reviewed by a Region Administrator selected on a rotating basis from a Western Washington region and vice versa.
2. The Region Administrators shall identify properties in their regions and submit them to be considered for advance acquisition. Any property or property rights to be purchased with the state fund must be designated highway transportation corridors and be for projects approved by the Transportation Commission as part of the state's six-year plan (current published Highway and Marine Construction Program) or included in the state's route development planning effort. The request documents shall include but shall not be limited to the current cost to acquire the property, future projected costs, what construction or other private improvement is currently being planned for the property, the estimated savings including relocation assistance and demolition costs, and the estimated time when the parcel will be incorporated into a project. Such state funded acquisitions shall generally not be more than ten years in advance of programmed construction.

3. The Committee will review the submittals and generally respond within five working days, provided that complete information is supplied.
4. A decision by the Committee may be appealed to the Director for Environmental and Engineering Programs.
5. At the end of each biennium, the Director, Real Estate Services, shall prepare a report for the department to submit to the legislature and to the Office of Financial Management. The report shall describe:
 - a. Properties which were purchased with monies from the state Advance Acquisition Revolving Fund and why;
 - b. Expenditures for the acquired parcels; and
 - c. Estimated savings to the state.
6. Because of the limited amount of funding available, the state's advance acquisition revolving fund will generally be used only on state funded projects.
7. The right of eminent domain will generally not be used for parcels purchased with revolving funds.
8. Properties considered for advance purchase include properties on which there is a known plan for major private development or a property offered for sale that is located within an area of rapid commercial, industrial, or residential development. Major development should include industrial or commercial construction, large apartment or condominium complexes, or a proposed subdivision of property.
9. There must be a high degree of certainty the property will be needed for a proposed highway project. The property should be needed in the majority of project construction options, including the preferred alternative if one has been identified.
10. Projected needs would normally require the use of a major portion, or all, of the property.
11. Efforts should be made to work with local agencies in controlling development or obtaining developer right of way donations where additional strips of property may be needed for future widening projects.
12. Acquisitions of total ownerships will not require mapping. Acquisitions of less than total ownerships will require a sufficient amount of design work and mapping to assure acquisition of appropriate right of way.
13. The Committee will evaluate, prioritize, and approve requests for use of the state revolving fund. For effective use of the revolving fund, properties must be evaluated for savings realized in the acquisition and for the speed with which the property will be incorporated into a funded project and the monies can be used for additional advance acquisitions. As a basis of comparison, with projects given more points having greater priority, the following point system may be used:

The estimated future acquisition cost including the value of any proposed private construction (improvements) plus the estimated potential relocation costs shall be divided by the current value of the vacant parcel. The result shall be multiplied by 100 then adjusted downward 50 points per year for the third and all subsequent years between purchase and repayment to the revolving fund.

For example:

FAC	=	Future acquisition costs
PRC	=	Potential relocation costs
CV	=	Current value
YR	=	Count only the third and each subsequent year between purchase and repayment

$$\frac{FAC + PRC}{CV} \times 100 - 50 \text{ for each yr} = \text{rating}$$

6-12.3.2 Advance Acquisition

Region RES Manager Procedures

1. Identifies properties that are potential candidates for advance acquisition.
2. Obtains supporting and appraisal data.
3. Submits completed request to DRES (see Figure 6-12.2.3.3 for sample transmittal document).

Committee Chair

4. Designates a Region Administrator to serve with the three permanent Committee members.
5. Checks submittal for completeness, obtains additional information when needed.
6. Verifies that request meets criteria for state funded advance acquisition.
7. Establishes a point rating for the property under consideration.

Committee

8. Reviews balance of, and cash flow into, revolving fund. Reviews project schedules and schedule changes which will affect any properties purchased in advance.
9. Approves or rejects the request.

Region RES Manager

10. Concurs or appeals decision.

Director for Environmental and Engineering Programs

11. If appeal is entered, hears and decides appeals.

Region

12. Initiates purchasing actions.

6-12.4 "Hardship" Acquisition and Protective Buying

- A. A parcel may be acquired by "hardship" acquisition procedures if such purchase will alleviate a department created hardship situation for a property owner (see Chapter 1 and this chapter, Advanced Acquisition, Section 6-12).
- B. "Hardship" acquisition envisions hardship occasioned or complicated by the impact of the potential transportation project. Such hardship is in contrast to others because of an inability to sell the property through normal market channels. "Others" (in the context just stated) are considered to be those not impacted by the project or those impacted by the project but not suffering particular hardship as a result of the impact.

- C. Authorization of “hardship” acquisitions is premised on reasonable and supportable justification of the action. This type of acquisition is approved with discretion and only after the justification clearly demonstrates that the acquisition is necessary to alleviate particular hardship to a property owner.
- D. Authorization of protective buying is appropriate when deemed to benefit the state.

6-12.4.1 Rules

- A. “Hardship” acquisition and protective buying procedures may be exercised within the limits of the proposed transportation corridor and may be authorized following the corridor (i.e., location) public hearing.
- B. “Hardship” acquisition procedures may be authorized on a parcel by parcel basis where it is shown that all of the following are applicable:
 - 1. The owner’s circumstances constitute an emergency substantially as described in one or more of the “Emergency Criteria” following.
 - 2. The case qualifies as described in the list of “hardship” qualifications following.
 - 3. The acquisition is necessary to alleviate the particular hardship to the property owner.
- C. Protective buying procedures (6-12.4.3) may be authorized on a parcel by parcel basis where it is shown that either:
 - 1. The acquisition is necessary to prevent **imminent** development and increased costs of the parcel which would tend to limit the choice of transportation alternatives.
 - 2. The expense incurred by the state in the advance purchase of said property is justified by the projected savings. Reasonably anticipated revenue to the state from interim uses of the property may be considered in estimating net expenses of such acquisitions.
- D. If the property lies within a project with known terminal limits but which has not been programmed, the region may submit the case documentation together with programming data (including estimate of the cost of the entire right of way project). The project may then be programmed as a Stage 1 or 2 right of way project, and funds set up only for the acquisitions requested.

6-12.4.1.1 Emergency Criteria

Emergency criteria exists when an owner:

- A. Needs to move immediately because of a change in location of employment.
- B. Is advised by a licensed physician to move from the area for reasons of health.
- C. Has made a legal commitment (e.g., an earnest money agreement, etc.) to purchase alternate property. Please note that this action may jeopardize the owner’s eligibility for relocation assistance entitlements (see Chapter 12) depending upon timing.
- D. Has encountered legal or business circumstances requiring divestiture of title to the subject property.
- E. Is required to make substantial capital improvements (e.g., new equipment for a factory) in order to continue use of the subject property, and these capital improvements would be financially unsound in view of the pending transportation project.

(Use Memorandum Format)

TO: Director, Real Estate Services

FROM: Region Administrator

SUBJECT: Advance Right of Way
Acquisition Committee
Parcel Prioritization Request

The parcel known as _____ is submitted for committee review and commitment of state advance acquisition revolving funds for acquisition. In support of this request, we are providing the following information:

1. Statement of Request
 - a. An Executive Summary of all the relevant information regarding the proposed right of way project including the current stage of project design and review, the project's effect on subject parcel, and the scheduled or most probable date that right of way acquisition funding would normally be approved.
 - b. A brief description of the parcel's neighborhood and of development trends affecting it.
 - c. A brief explanation of the current proposal to develop this parcel or neighborhood trends likely to result in a specific development in the near future.
 - d. Other data pertinent to this request.
2. Assessor's Map showing the parcel and surrounding area.
3. Short Form Appraisal and Determination of Value for the parcel establishing its current value.
4. Appraiser's Estimate of Parcel's Value on the date that normal project funding is expected (see 1-A) and assuming that expected development has taken place as discussed in 1-C above.
5. Estimate of Relocation Costs based on any current relocation obligations and also an estimate of relocation costs at the future acquisition date assuming full development and occupancy of the parcel.
6. Other Material and correspondence that the region feels is pertinent.

Sample Revolving Fund Request
Figure 6-12.2.3.3

6-12.4.1.2 Hardship Qualifications

Hardship qualifications require that the case meets all of the following conditions:

- A. The owner initiates the application for hardship acquisition.
- B. The application is in writing and sets forth the exact circumstances creating the hardship.
- C. The only appropriate action for the owner is the immediate sale of the subject property.
- D. Because of the pending transportation project, the owner is unable to sell the subject property on the open market at its market value.

6-12.4.2 Hardship Acquisition Procedures

- A. The Region Administrator determines the status of transportation project location activities potentially affecting the parcel and refers appropriate requests to the Region RESM.
- B. The Region RESM:
 - 1. Assures that information regarding right of way acquisition procedures and relocation assistance entitlements and procedures is made available at public hearings as specified in Sections 6-2 and 12-2.
 - 2. Determines that the ownership is within the limits of the proposed transportation corridor.
 - 3. Sends a letter to the property owner acknowledging receipt of the application, and advising the owner of the approximate processing time.
 - 4. Evaluates the application for hardship acquisition to assure that it meets the criteria specified above.
 - 5. Prepares the following data package:
 - a. A report covering a field investigation of the application.
Note: This report either confirms or refutes the hardship alleged in the acquisition application letter; includes the Region RESM recommendations; documents necessary factors for full coverage of the three elements described above.
 - b. The Relocation Assistance Program Plan (including tenants and owners).
 - c. The Project Funding Estimate (see Chapter 4) for the parcel(s) prominently identified as “Hardship Acquisition” and showing: the name of the owner, the parcel number, the estimated cost of the parcel, a breakdown of the five right of way groups, a breakdown of urban and rural (if applicable), and the number of individuals, families, businesses, etc., displaced. If the parcel is concurrently affected by more than one project, the breakdown is allocated to each project.
 - d. The title report for each hardship parcel.
- C. Further processing and authorization is accomplished in compliance with Chapter 1.
- D. Upon receipt of the Work Order Accounting Plan, the Region Administrator notifies the Region RESM to proceed with the hardship parcel acquisitions on an expedited basis.
- E. Using the procedures of this chapter, the Region RESM expedites further region processing of the hardship parcels.

6-12.4.3 Protective Buying Procedures

With input from the Region Project Development Engineer, the Real Estate Services Manager will evaluate the potential benefits of purchasing property available on the open market to protect it from potential development for a future WSDOT project.

Provided funding is available, the Region RESM acquires the property using normal procedures.

6-12.5 Functional Replacement of Publicly-Owned Real Property

6-12.5.1 General

- A. Occasionally it is necessary to acquire publicly-owned, special use properties; e.g., a school, fire station, etc. Generally, just compensation for such special use properties cannot be found by use of the common market value approach. Instead, just compensation for such properties may be measured by the cost of replacing the property with one that is functionally equal to the acquired property. Hence, if a fire station is being acquired, the just compensation for the fire station may be the cost of sufficient land in an equally suitable location upon which to build a replacement plus the amount necessary to construct a new fire station thereon. Functional replacement is limited to replacement of acquired lands and facilities with functionally equivalent lands and facilities. To qualify for reimbursement from FHWA, if there are federal funds in the right of way acquisition, FHWA must approve.
- B. Although the state of Washington has no specific case or statute law covering functional replacement, the principle of substitution and the provisions of RCW 47.12.040 and 47.12.150 are relied upon.

6-12.5.2 Rules

- A. Cases that require functional replacement are identified as early as possible in the location and design stage so that they can be included in the environmental impact studies and addressed following plan development.
- B. Functional replacement may be authorized under the following conditions:
 - 1. The property to be functionally replaced is in public ownership (except that properties owned by railroads, utilities and the federal government are ineligible).
 - 2. The functional replacement actually takes place, and the costs of replacement are actually incurred.
 - 3. The replacement site and construction thereon are in compliance with existing codes, laws, and zoning regulations.
 - 4. Functional replacement costs include:
 - a. The actual cost of providing a replacement facility having the same functional capabilities; and
 - b. Either of the following:
 - (1) The appraised current market value of the land to be acquired for transportation purposes, where the owning agency has other lands on which to relocate the facilities; or
 - (2) The reasonable cost of acquiring a functionally equivalent substitute site where lands in the same public ownership are not available or suitable.

5. Costs chargeable to increases in capacity and other betterments are not eligible, except:
 - a. Those necessary to replace utility.
 - b. Those required by existing codes, laws, and zoning regulations.
 - c. Those related to reasonable prevailing standards for the type of facility being replaced.
 6. If the appraised market value of the property to be acquired exceeds the cost of functional replacement, the market value may be paid.
- C. To be eligible for functional replacement, publicly-owned real property actually must be in a specific use. For example: lands which are in actual use as a public park would be eligible; however, undeveloped lands which are being held for future park use normally would not be eligible.
- D. Eligibility for functional replacement of a Volunteer Fire Department (VFD) is determined on a case by case basis. Authorization to permit functional replacement may be obtained if the state's file clearly shows that:
1. The VFD's facilities are devoted strictly to public use and are serving a public need which would otherwise have to be provided if the subject facility did not exist.
 2. The VFD's facilities are physically unique. Facilities do not qualify if they are of a type that is found in the normal market.
 3. The VFD has clear title to the land and the facilities on the land.
- Note:** The functional replacement concept may independently apply to owned improvements if they are on land that is not owned by the VFD. Title to land and/or facilities may be cleared by the VFD if it is desirable to qualify for functional replacement where all other conditions are met.
4. The VFD agrees to follow a nondiscriminatory policy consistent with Title VI of the Civil Rights Act of 1964 and 23USC 324 with regard to race, color, national origin, and sex, and to amend, revise, or modify any existing charter, bylaws, deed restrictions, etc. to that end.

6-12.5.3 Procedures

- A. The Region RESM:
1. In the advance planning design or access and right of way phase, identifies real properties that are in public ownership and which may qualify for functional replacement.
 2. Subject to appropriate authority from the Region Administrator, meets with officials of the owning agency to discuss the effects of the proposed acquisition and the potential for application of functional replacement procedures, and:
 - a. Establishes a parcel file for the case by taking the actions specified in Section 6-2, and assures that file includes a Diary of Right of Way Activities — Acquisition and a Functional Replacement Checklist, Figure 6-12.5.3A2a.
 - b. Offers to have property valuation made on both market value and functional replacement bases.

- c. Allows owning agency to select valuation method(s).

Note: A market value appraisal and Determination of Value (DV) are made in every case except when the owning agency specifically waives its right to have its property appraised.

- 3. Reports the results of discussions and decisions concerning functional replacement to the Region Administrator for inclusion in environmental impact statements, etc., if required on a project.
- 4. Assures that appropriate instructions are given to appraisers, specialists, and review appraisers (see Chapters 4 and 5).

Note: Appraisal and DV on both the market value and the functional replacement premise may be required.

- 5. If the owning agency has indicated that it elects functional replacement, verifies that the owning agency has submitted a letter (addressed to the Region Administrator) formally requesting functional replacement, fully explaining why such replacement would be in the public interest, and, if it so elects, waiving its right to have its property appraised.
- 6. Submits to the DRES:
 - a. Cost estimate data showing comparative costs. A suggested format is given in Figure 6-12.5.3A6a.
 - b. A Memorandum covering:
 - (1) Tentative agreements reached with the owning agency.
 - (2) Justification for functional replacement.
 - (3) Assurance that all replacement property will be acquired in compliance with all state and federal regulations concerning acquisition and relocation assistance.
 - c. The owning agency's letter requesting functional replacement.
 - d. Any other pertinent data.

Functional Replacement of Publicly-Owned Real Property — Checklist

(Parcel and Project Identification)

I. Conceptual Approval

Yes No

- ☐ ☐ A. The property is in public ownership.
- ☐ ☐ B. There is a physical taking from the property.
- ☐ ☐ C. Adequate coverage has been given to functional replacement in the project planning documents such as those specified in D 33-30 (PP), Environmental Quality.
- ☐ ☐ D. WSDOT representatives have met with the owning agency and have discussed the effects of acquisition and potential application of functional replacement procedures.

Date

- ☐ E. Conceptual agreement obtained from the Director for Environmental and Engineering Programs.

II. Formal Concurrence and Authorization to Proceed

Date

- ☐ A. WSDOT offers the market value to the owning agency, or the agency waives this right.
- ☐ B. The owning agency formally requests that WSDOT proceed with functional replacement.
- ☐ C. The Director for Environmental and Engineering Programs formally agrees that functional replacement is necessary and is in the public interest.
- ☐ D. If applicable, WSDOT has prepared an acceptable environment impact statement and Relocation Plan pertaining to the replacement site.
- ☐ E. The region submitted to Headquarters a formal request for concurrence, including:
 - 1. Cost estimate data.
 - 2. Tentative agreements reached between WSDOT and the owning agency.
 - 3. A statement that the replacement property will be acquired in accordance with the provisions of all applicable state and federal regulations concerning acquisition and relocation assistance.
 - 4. A machine copy of the *Diary of Right of Way Activities — Acquisition* showing all activity to date.
- ☐ F. Formal concurrence that functional replacement is in the public interest, and authorization for the region to proceed with PS&E for the replacement facility and the acquisition of the replacement site was received from the Director for Environmental and Engineering Programs.

Note: The Director, Real Estate Services, takes action as appropriate to obtain FHWA approval or concurrence if participation of federal funds is desired in any part of the right of way costs of the project.

Functional Replacement of Publicly-Owned Real Property Checklist (page 1 of 2)
Figure 6-12.5.3A2a

III. Review and Approval of PS&E

Yes No

- ___ ___ A. Submission provides for departmental inspection during construction of the replacement facility.
- ___ ___ B. There replacement site and construction are in compliance with all existing codes, laws, zoning regulations, etc., for the area in which the facility is located.
- ___ ___ C. Increases in capacity and other betterments not necessary to replace utility and unrelated to reasonable prevailing standards for the type of facility being replaced:
1. Have been identified.
 2. Have not been included as eligible for federal funds.
- ___ ___ D. Provisions for advertising for bids and letting of construction contracts are acceptable to the Director for Environmental and Engineering Programs.

Date

- ___ ___ E. The Director for Environmental and Engineering Programs formally approves the PS&E.

IV. Concurrence to Award

Yes No

- ___ ___ A. A formal agreement has been entered into between the owning agency and WSDOT, setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, the conveyance of the lands required for highway purposes, and the construction of the replacement facility. The executed agreement sets forth how costs of the new facility are to be shared between the parties.

Date

- ___ ___ B. Formal concurrence in the award for actual construction is received from the Director for Environmental and Engineering Programs.

V. Release From Further Responsibility

Yes No

- ___ ___ A. If substitute lands were acquired in the name of the state, conveyance of the substitute lands to the agency has been accepted. Date _____.
- ___ ___ B. Conveyance to the state of the lands required for highway purposes has been accepted. Date _____.
- ___ ___ C. A statement is placed in the parcel file, signed by an appropriate official of the owning agency and the department, certifying that the cost of the replacement facility has actually been insured in accordance with the provisions of the executed agreement, that a final inspection of the facility was made by the department and the owning agency, and that the department is released from any further responsibility.

Note: The Director, Real Estate Services, takes action as appropriate to obtain FHWA approval or concurrence if participation of federal funds is desired in any part of the right of way costs of the project.

Functional Replacement of Publicly-Owned Real Property Checklist (page 2 of 2)
Figure 6-12.5.3A2a

B. The DRES:

1. Reviews the submittal from the Region RESM.
2. If federal funds are to participate, prepares and transmits a letter (over the signature of the Director for Environmental and Engineering Programs) to the FHWA, Division Administrator including:
 - a. A request for FHWA concurrence in functional replacement.
 - b. A request for FHWA authorization to proceed with the acquisition of a substitute site, the physical construction of minor site improvements, and the preparation of PS&E for major site improvements.
 - c. Appropriate additional data received from region.
3. Upon verification from FHWA that functional replacement is in the best interest of the state, notifies the Region Administrator. Such verification stems from the approval of the Director for Environmental and Engineering Programs when federal participation is not involved.

Note: When required, PS&E for major site improvements are prepared by the owner of the improvements being replaced and submitted for FHWA review and approval. Costs of PS&E preparation are normally reimbursable under functional replacement.

C. The Region RESM:

1. Obtains execution by the appropriate officials of the owning agency of a formal agreement which sets forth:
 - a. The rights, obligations and duties of each party with regard to the facility being acquired; the acquisition of the replacement site, specifying how the agencies name is to appear on acquisition.
 - b. How the costs of the new facility are to be shared between the parties.
2. Proceeds with the acquisition of the substitute site, if appropriate, in the name of the party specified in the agreement (C.l. above).
3. Submits proposed PS&E for the functional replacement to the DRES, if required.
4. Submits the agreement to the DRES for execution.

D. The DRES:

1. Reviews the agreement and executes it for the state of Washington.
2. If federal funds are to participate, submits the executed agreement to the FHWA together with a letter requesting FHWA concurrence.
3. Notifies the Region RESM upon receipt of FHWA concurrence.

E. Upon completion of construction, the Region RESM:

1. Makes a joint final inspection of the replacement facility with the appropriate representatives of the owning agency.
2. Verifies that the conveyance from the agency to the state of the lands required for highway purposes has been accepted by the state.
3. If appropriate, submits voucher for any costs, e.g., relocation assistance, due to the agency pursuant to the agreement (C.l. above).

4. Obtains a statement from the appropriate officials of the owning agency that:
 - a. The costs of the replacement facility have actually been incurred in accordance with the provisions of the executed agreement.
 - b. A final inspection of the replacement facility has been made by both parties.
 - c. The Department of Transportation is released from any further responsibilities.

(Project and Parcel Identification)

Functional Replacement Costs Analysis

Cost Items	Acquisition Based on Market Value Concept	Cost to Acquire Substitute Property
Land	\$ _____	_____
Buildings	_____	_____
Facilities	_____	_____
Damages	_____	_____
Moving Costs	_____	_____
Replacement Housing	_____	_____
Other Items	_____	_____
		\$ _____
Total	\$ _____	
		Cost to Cure or Functionally Replace
Buildings		\$ _____
Facilities		_____
Other Items		_____
		+ _____
		\$ _____
		Nonparticipating Items (Betterments)
(Identify Items)		\$ _____

		- _____
Total		\$ _____

Note: Exact breakdowns need not be given if property estimates are appropriate. Moving costs, replacement housing, and incidental expenses may be based on average or percentages similar to estimates.

Authorization of Acquisition
Figure 6-12.5.3A6a